

**VIRGINIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**  
**Division of Building and Fire Regulation**

**501 North 2nd Street**  
**Richmond, Virginia 23219-1321**

**BUILDING AND FIRE CODE RELATED LAWS PACKAGE**  
**(For correlation with the 2003 State Building and Fire Codes)**

This package is provided to assist persons that are using or applying Virginia's building and fire related regulations. The information contained in this package has been compiled from the Code of Virginia and other sources and is intended to be used as a quick, handy reference guide or aid. The excerpts from the Code of Virginia are only current through the 2005 Session of the General Assembly. More recent laws may be viewed at the website of the Virginia Code Commission at the following address: <http://legis.state.va.us/codecomm/codehome.htm>.

Also contained in this package is information about when an architect's or engineer's seal is required on construction documents (drawings) required for permits to construct buildings and structures, with regard to group classification, occupancy load and physical size and limiting criteria for design of electrical, plumbing and mechanical systems in such structures. There are contacts and telephone numbers for functional design responsibilities and a list of previous adoptions and amendments of the Uniform Statewide Building Code (USBC) with dates and references to effective editions of model codes and standards. There is an index and copies of memorandums of agreement for information on the relationship of other state agencies' regulations to the Board of Housing and Community Development's regulations in certain subject areas.

USBC questions: The local building inspection department should be consulted for information and assistance regarding application of the USBC. Additional technical assistance may be obtained by contacting the Regional State Fire Marshal's office in your area or the State Building Code Administrative Office may also be contacted at (804) 371-7160.

Statewide Fire Prevention Code (SFPC) questions: The local fire prevention department should be consulted for information and assistance regarding application of the SFPC. Additional technical assistance may be obtained by also contacting the Regional State Fire Marshal's office in your area.

**February 2006**

## TABLE OF CONTENTS

<u>Subject</u>	<u>Page No(s).</u>
Excerpts from the Code of Virginia	
Records relating to public safety (§ 2.2-3705.2)	1
Local governments (§§ 15.2-900 through 15.2-902, 15.2-906, 15.2-921, 15.2-922, 15.2-2290, 15.2-2291, 15.2-2295, 15.2-2307 and 15.2-2313)	1 - 5
Limitation of prosecutions (§ 19.2-8)	6 - 7
Local Fire Marshals (§§ 27-30 through 27-37.1)	7 - 9
Statewide Fire Prevention Code Act (§ 27-94 through 27-101)	9 - 14
Industrialized Building Safety Law (§§ 36-70 through 36-85.1)	14 - 17
Manufactured Housing Construction and Safety Standards Law (§§ 36-85.2 through 36-85.15)	17 - 20
Manufactured Housing Licensing and Transaction Recovery Fund Law (§§ 36-85.16 through 36-85.36)	20 - 26
Uniform Statewide Building Code (§§ 36-97 through 36-119.1)	27 - 41
Department of Housing and Community Development (§§ 36-131 through 36-139.7)	41- 46
Registered Design Professionals (§§ 54.1-400, 54.1-402, 54.1-402.1 and 54.1-410)	47 - 49
Implied warranties on new homes (§ 55-70.1)	50
Social Services Facilities (§ 63.2-1705)	50
A/E Seal on Drawings	51 - 53
Functional Design Responsibilities	54
Previous Adoptions and Amendments (USBC)	55 - 56
Memorandums of Agreement	57 - 64
Boiler and Pressure Vessel Guide	65
Underground and Aboveground Storage Tanks	66 - 69

## EXCERPTS FROM THE CODE OF VIRGINIA

### **§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety.**

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

1. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.
2. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit that would identify specific trade secrets or other information, the disclosure of which would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Those portions of engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.), the disclosure of which would jeopardize the safety or security of any public or private commercial office, multifamily residential or retail building or its occupants in the event of terrorism or other threat to public safety, to the extent that the owner or lessee of such property, equipment or system in writing (i) invokes the protections of this paragraph; (ii) identifies the drawings, plans, or other materials to be protected; and (iii) states the reasons why protection is necessary.

Nothing in this subdivision shall prevent the disclosure of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster or other catastrophic event.

### **§ 15.2-900. Abatement or removal of nuisances by localities; recovery of costs.**

In addition to the remedy provided by § 48-5 and any other remedy provided by law, any locality may maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the locality may abate, raze, or remove such public nuisance, and a locality may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

The term "nuisance" includes, but is not limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls, or structures which constitute a menace to the health and safety of the occupants thereof or the public. The term "responsible party" includes, but is not limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.

### **§ 15.2-901. Locality may provide for removal or disposal of trash, cutting of grass and weeds; penalty in certain counties.**

A. Any locality may, by ordinance, provide that:

1. The owners of property therein shall, at such time or times as the governing body may prescribe, remove therefrom any and all trash, garbage, refuse, litter and other substances which might endanger the health or safety of other residents of such locality; or may, whenever the governing body deems it necessary, after reasonable notice, have such trash, garbage, refuse, litter and other like substances which might endanger the health of other residents of the locality, removed by its own agents or employees, in which event the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;
2. Trash, garbage, refuse, litter and other debris shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purpose and in no other manner not authorized by law;

3. The owners of vacant developed or undeveloped property therein, including such property upon which buildings or other improvements are located, shall cut the grass, weeds and other foreign growth on such property or any part thereof at such time or times as the governing body shall prescribe; or may, whenever the governing body deems it necessary, after reasonable notice as determined by the locality, have such grass, weeds or other foreign growth cut by its agents or employees, in which event the cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the locality as taxes are collected. In a locality within Planning District 8, an ordinance adopted pursuant to this subdivision may also apply to owners of occupied property therein. No such ordinance adopted by any county shall have any force and effect within the corporate limits of any town. No such ordinance adopted by any county having a density of population of less than 500 per square mile shall have any force or effect except within the boundaries of platted subdivisions or any other areas zoned for residential, business, commercial or industrial use.

B. Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

C. The governing body of any locality may by ordinance provide that violations of this section shall be subject to a civil penalty, not to exceed \$50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.

D. Except as provided in this subsection, adoption of an ordinance pursuant to subsection C shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. The governing body of any locality may, however, by ordinance provide that such violations shall be a Class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

#### **§ 15.2-902. Authority of locality to control certain noxious weeds.**

A. Any locality may by ordinance prevent, control and abate the growth, importation, spread and contamination of uninfested lands by the species of grass *Sorghum halepense*, commonly known as Johnson grass or by the woody shrub *rosa multiflora*, commonly known as multiflora rose.

B. The Virginia Department of Agriculture and Consumer Services is authorized to provide financial and technical assistance to, and enter into agreements with, any locality which adopts an ordinance for the control of Johnson grass or multiflora rose.

#### **§ 15.2-906. Authority to require removal, repair, etc., of buildings and other structures.**

Any locality may, by ordinance, provide that:

1. The owners of property therein, shall at such time or times as the governing body may prescribe, remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of such locality;

2. The locality through its own agents or employees may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of such locality, if the owner and lien holder of such property after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure the building, wall or other structure. For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. No action shall be taken by the locality to remove, repair or secure any building, wall or other structure for at least 30 days following the later of the return of the receipt or newspaper publication;

3. In the event the locality, through its own agents or employees, removes, repairs or secures any building, wall or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the locality as taxes are collected;

4. Every charge authorized by this section or § 15.2-900 with which the owner of any such property has been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed;

5. A locality may prescribe civil penalties, not to exceed a total of \$1,000, for violations of any ordinance adopted pursuant to this section.

#### **§ 15.2-921. Ordinances requiring fencing of swimming pools.**

For the purposes of this section:

"Swimming pool" includes any outdoor man-made structure constructed from material other than natural earth or soil designed or used to hold water for the purpose of providing a swimming or bathing place for any person or any such structure for the purpose of impounding water therein to a depth of more than two feet.

"Fence" means a close type vertical barrier not less than four feet in height above ground surface. A woven steel wire, chain link, picket or solid board type fence or a fence of similar construction which will prevent the smallest of children from getting through shall be construed as within this definition.

Any locality may adopt ordinances making it unlawful for any person to construct, maintain, use, possess or control any pool on any property in such locality, without having a fence completely around such swimming pool. Such ordinances also may provide that every gate in such fence shall be capable of being securely fastened at a height of not less than four feet above ground level; that it shall be unlawful for any such gate to be allowed to remain unfastened while the pool is not in use; and that such fence shall be constructed so as to come within two inches of the ground at the bottom and shall be at least five feet from the edge of the pool at any point.

Violation of any such ordinance may be made punishable by a fine of not more than \$300 or confinement in jail for not more than thirty days, either or both. Each day's violation may be construed as a separate offense.

Any such ordinance may be made applicable to swimming pools constructed before, as well as those constructed after, the adoption thereof. No such ordinance shall take effect less than ninety days from the adoption thereof, nor shall any such ordinance apply to any swimming pool operated by or in conjunction with any hotel located on a government reservation.

#### **§ 15.2-922. Smoke detectors in certain buildings.**

Any locality, notwithstanding any contrary provision of law, general or special, may by ordinance require that smoke detectors be installed in the following structures or buildings: (i) any building containing one or more dwelling units, (ii) any hotel or motel regularly used or offered for, or intended to be used to provide overnight sleeping accommodations for one or more persons, and (iii) rooming houses regularly used, offered for, or intended to be used to provide overnight sleeping accommodations. Smoke detectors installed pursuant to this section shall be installed in conformance with the provisions of the Uniform Statewide Building Code. The ordinance shall allow the type of smoke detector to be either battery operated or AC powered units. Such ordinance shall require that the owner of any unit which is rented or leased, at the beginning of each tenancy and at least annually thereafter, shall furnish the tenant with a certificate that all required smoke detectors are present, have been inspected, and are in good working order. Except for smoke detectors located in hallways, stairwells, and other public or common areas of multifamily buildings, interim testing, repair, and maintenance of smoke detectors in rented or leased units shall be the responsibility of the tenant; however, the owner shall be obligated to service, repair, or replace any malfunctioning smoke detectors within five days of receipt of written notice from the tenant that such smoke detector is in need of service, repair, or replacement.

#### **§ 15.2-2290. Uniform regulations for manufactured housing.**

A. Localities adopting and enforcing zoning ordinances under the provisions of this article shall provide that, in all agricultural zoning districts or districts having similar classifications regardless of name or designation where agricultural, horticultural, or forest uses such as but not limited to those described in § 58.1-3230 are the dominant use,



the placement of manufactured houses that are on a permanent foundation and on individual lots shall be permitted, subject to development standards that are equivalent to those applicable to site-built single family dwellings within the same or equivalent zoning district.

B. Localities adopting and enforcing zoning regulations under the provisions of this article may, to provide for the general purposes of zoning ordinances, adopt uniform standards, so long as they apply to all residential structures erected within the agricultural zoning district or other districts identified in subsection A of this section incorporating such standards. The standards shall not have the effect of excluding manufactured housing.

C. Local zoning ordinances adopting provisions consistent with this section shall not relieve lots or parcels from the obligations relating to manufactured housing units imposed by the terms of a restrictive covenant.

**§ 15.2-2291. Group homes of eight or fewer single-family residence.**

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Mental Health, Mental Retardation and Substance Abuse Services is the licensing authority pursuant to this Code.

B. Zoning ordinances in counties having adopted the county manager plan of government and any county with a population between 55,800 and 57,000 for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances in any city with a population between 60,000 and 70,000 for all purposes shall consider a residential facility in which no more than four aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

**§ 15.2-2295. Aircraft noise attenuation features in buildings and structures within airport noise zones.**

Any locality in whose jurisdiction, or adjacent jurisdiction, is located a licensed airport or United States government or military air facility, may enforce building regulations relating to the provision or installation of acoustical treatment measures in residential buildings and structures, or portions thereof, other than farm structures, for which building permits are issued after January 1, 2003, in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Any locality in whose jurisdiction a United States Master Jet Base is located or any adjacent locality may, in addition, adopt and enforce building regulations relating to the provision or installation of acoustical treatment measures applicable to buildings and structures, or portions thereof, in Assembly, Business, Educational, Institutional, and Mercantile groups, as defined in the International Building Code.

In establishing the regulations, the locality may adopt one or more noise overlay zones as an amendment to its zoning map and may establish different measures to be provided or installed within each zone, taking into account the severity of the impact of aircraft noise upon buildings and structures within each zone. Any such regulations or amendments to a zoning map shall provide a process for reasonable notice to affected property owners. Any regulations or amendments to a zoning map shall be adopted in accordance with this chapter. A statement shall be placed on all recorded surveys, subdivision plats and all final site plans approved after January 1, 2003, giving notice that a parcel of real property either partially or wholly lies within an airport noise overlay zone. No existing use of property which is affected by the adoption of such regulations or amendments to a zoning map shall be considered a nonconforming use solely because of the regulations or amendments. The provisions of this section shall not affect any local aircraft noise attenuation regulations or ordinances adopted prior to the effective date of this act, and such regulations and ordinances may be

amended provided the amendments shall not alter building materials, construction methods, plan submission requirements or inspection practices specified in the Virginia Uniform Statewide Building Code.

**§ 15.2-2307. Vested rights not impaired; nonconforming uses.**

Nothing in this article shall be construed to authorize the impairment of any vested right. Without limiting the time when rights might otherwise vest, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

For purposes of this section and without limitation, the following are deemed to be significant affirmative governmental acts allowing development of a specific project: (i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; or (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property.

A zoning ordinance may provide that land, buildings, and structures and the uses thereof which do not conform to the zoning prescribed for the district in which they are situated may be continued only so long as the then existing or a more restricted use continues and such use is not discontinued for more than two years, and so long as the buildings or structures are maintained in their then structural condition; and that the uses of such buildings or structures shall conform to such regulations whenever they are enlarged, extended, reconstructed or structurally altered and may further provide that no nonconforming building or structure may be moved on the same lot or to any other lot which is not properly zoned to permit such nonconforming use.

Nothing in this section shall be construed to prevent a locality, after making a reasonable attempt to notify such property owner, from ordering the removal of a nonconforming sign that has been abandoned. For purposes of this section, a sign shall be considered abandoned if the business for which the sign was erected has not been in operation for a period of at least two years. Any locality may, by ordinance, provide that following the expiration of the two-year period any abandoned nonconforming sign shall be removed by the owner of the property on which the sign is located, if notified by the locality to do so. If, following such two-year period, the locality has made a reasonable attempt to notify the property owner, the locality through its own agents or employees may enter the property upon which the sign is located and remove any such sign whenever the owner has refused to do so. The cost of such removal shall be chargeable to the owner of the property. Nothing herein shall prevent the locality from applying to a court of competent jurisdiction for an order requiring the removal of such abandoned nonconforming sign by the owner by means of injunction or other appropriate remedy.

Nothing in this section shall be construed to prevent the land owner or home owner from removing a valid nonconforming manufactured home from a mobile or manufactured home park and replacing that home with another comparable manufactured home that meets the current HUD manufactured housing code. In such mobile or manufactured home park, a single-section home may replace a single-section home and a multi-section home may replace a multi-section home. The owner of a valid nonconforming mobile or manufactured home not located in a mobile or manufactured home park may replace that home with a newer manufactured home, either single- or multi-section, that meets the current HUD manufactured housing code. Any such replacement home shall retain the valid nonconforming status of the prior home.

**§ 15.2-2313. Proceedings to prevent construction of building in violation of zoning ordinance.**

Where a building permit has been issued and the construction of the building for which the permit was issued is subsequently sought to be prevented, restrained, corrected or abated as a violation of the zoning ordinance, by suit filed within fifteen days after the start of construction by a person who had no actual notice of the issuance of the permit, the court may hear and determine the issues raised in the litigation even though no appeal was taken from the decision of the administrative officer to the board of zoning appeals.

**§ 19.2-8. Limitation of prosecutions.**

A prosecution for a misdemeanor, or any pecuniary fine, forfeiture, penalty or amercement, shall be commenced within one year next after there was cause therefor, except that a prosecution for petit larceny may be commenced within five years, and for an attempt to produce abortion, within two years after commission of the offense.

A prosecution for violation of laws governing the placement of children for adoption without a license pursuant to § 63.2-1701 shall be commenced within one year from the date of the filing of the petition for adoption.

A prosecution for making a false statement or representation of a material fact knowing it to be false or knowingly failing to disclose a material fact, to obtain or increase any benefit or other payment under the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.) shall be commenced within three years next after the commission of the offense.

A prosecution for any violation of § 10.1-1320, 62.1-44.32 (b), 62.1-194.1, or Article 11 (§ 62.1-44.34:14 et seq.) of Chapter 3.1 of Title 62.1 that involves the discharge, dumping or emission of any toxic substance as defined in § 32.1-239 shall be commenced within three years next after the commission of the offense.

Prosecution of Building Code violations under § 36-106 shall commence within one year of discovery of the offense by the owner or by the building official; provided that such discovery occurs within two years of the date of initial occupancy or use after construction of the building or structure, or the issuance of a certificate of use and occupancy for the building or structure, whichever is later. However, prosecutions under § 36-106 relating to the maintenance of existing buildings or structures as contained in the Uniform Statewide Building Code shall commence within one year of the discovery of the offense.

Prosecution of nonfelonious offenses which constitute malfeasance in office shall commence within two years next after the commission of the offense.

Prosecution of any violation of § 55-79.87, 55-79.88, 55-79.89, 55-79.90, 55-79.93, 55-79.94, 55-79.95, 55-79.103, or any rule adopted under or order issued pursuant to § 55-79.98, shall commence within three years next after the commission of the offense.

Prosecution of illegal sales or purchases of wild birds, wild animals and freshwater fish under § 29.1-553 shall commence within three years after commission of the offense.

Prosecution of violations under Title 58.1 for offenses involving false or fraudulent statements, documents or returns, or for the offense of willfully attempting in any manner to evade or defeat any tax or the payment thereof, or for the offense of willfully failing to pay any tax, or willfully failing to make any return at the time or times required by law or regulations shall commence within three years next after the commission of the offense, unless a longer period is otherwise prescribed.

Prosecution of violations of subsection A or B of § 3.1-796.122 shall commence within five years of the commission of the offense, except violations regarding agricultural animals shall commence within one year of the commission of the offense.

A prosecution for a violation of § 18.2-386.1 shall be commenced within five years of the commission of the offense.

A prosecution for any violation of the Campaign Finance Disclosure Act (§ 24.2-900 et seq.) shall commence within one year of the discovery of the offense but in no case more than three years after the date of the commission of the offense.

A prosecution of a crime that is punishable as a misdemeanor pursuant to the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) shall be commenced before the earlier of (i) five years after the commission of the last act in the course of conduct constituting a violation of the article or (ii) one year after the existence of the illegal act and the identity of the offender are discovered by the Commonwealth, by the owner, or by anyone else who is damaged by such violation.

Nothing in this section shall be construed to apply to any person fleeing from justice or concealing himself within or without the Commonwealth to avoid arrest or be construed to limit the time within which any prosecution may be



commenced for desertion of a spouse or child or for neglect or refusal or failure to provide for the support and maintenance of a spouse or child.

**§ 27-30. Appointment of fire marshal.**

An officer, who shall be called a "fire marshal," may be appointed for each county, city or town, by the governing body thereof, whenever, in the opinion of such body, the appointment shall be deemed expedient. The term "fire marshal" as used in this chapter may include the local fire official and local arson investigator when appointed pursuant to this section.

**§ 27-31. Investigation of fires and explosions.**

Such fire marshal shall make an investigation into the origin and cause of every fire and explosion occurring within the limits for which he was appointed, and for any such service he shall receive such compensation as the governing body may allow.

**§ 27-32. Summoning witnesses and taking evidence.**

In making investigations pursuant to § 27-31, the fire marshal may issue a summons directed to a sheriff or sergeant of any county, city or town commanding the officer to summon witnesses to attend before him at such time and place as he may direct. Any such officer to whom the summons is delivered, shall forthwith execute it, and make return thereof to the fire marshal at the time and place named therein.

Witnesses, on whom the summons before mentioned is served, may be compelled by the fire marshal to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a justice of the peace in a criminal case. They shall be sworn by the fire marshal before giving evidence, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively.

**§ 27-32.1. Right of entry to investigate cause of fire or explosion.**

If in making such an investigation, the fire marshal shall make complaint under oath that there is good cause of suspicion or belief that the burning of or explosion on any land, building or vessel or of any object was caused by any act constituting a crime as defined in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 and that he has been refused admittance to the land, building or vessel or to examine the object in or on which any fire or explosion occurred within fifteen days after the extinguishment of such, any justice of the peace of the city or county where the land, building, vessel or object is located may issue a warrant to the sheriff of the county or the sergeant of the city requiring him to enter such land, building or vessel or the premises upon which the object is located in the company of the fire marshal for the purposes of conducting a search for evidence showing that such fire or explosion was caused by any act defined in Article 1 of Chapter 5, of Title 18.2.

**§ 27-32.2. Issuance of fire investigation warrant.**

If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any fire or explosion on any land, building, or vessel, or of any object is undetermined and that he has been refused admittance thereto, or is unable to gain permission to enter such land, building, or vessel, or to examine such object, within fifteen days after the extinguishing of such, any magistrate of the city or county where the land, building, vessel, or object is located may issue a fire investigation warrant to the fire marshal authorizing him to enter such land, building, vessel, or the premises upon which the object is located for the purpose of determining the origin and source of such fire or explosion. If the fire marshal, after gaining access to any land, building, vessel, or other premises pursuant to such a fire investigation warrant, has probable cause to believe that the burning or explosion was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained pursuant to § 27-32.1, or consent to conduct the search has otherwise been given.

**§ 27-33. Report of investigation.**

The fire marshal shall make report to the governing body by whom he was appointed of any investigation made by him as soon thereafter as practicable, returning therewith the evidence taken by him and submitting such recommendations therein as he may think the public interest demands.

#### **§ 27-34. Duties and powers at fires.**

Whenever any fire occurs, it shall be the duty of such fire marshal or his designated representative to be present at the same and advise and act in concert with such officers of police as may be present; and, for preserving order at and during the existence of such fire, and for the protection of property, he shall have concurrent powers with the officers of police, and the chief or other officer in charge, but shall not exercise any authority which will conflict with the powers of any chief or other officer in command of any fire department in the discharge of his special duties as such.

##### **§ 27-34.1. Power of fire marshal or fire chief to take property found at scene of fire or explosion; restitution of such property.**

The fire chief, fire marshal or his designated representative is authorized to take and preserve any property found at the scene of a fire or explosion during his presence there while in the act of extinguishing such or found later with the consent of the owner or pursuant to § 27-32.1, which property indicates the fire or explosion was intentionally caused. Any person whose property is so taken and held may petition the circuit court of the county or city in which the property was taken or judge in vacation, for return of the property, and the court may order restitution upon such conditions as are appropriate for preservation of evidence, including the posting of bond.

##### **§ 27-34.2. Power to arrest, to procure and serve warrants and to issue summons; limitation on authority.**

In addition to such other duties as may be prescribed by law, the local fire marshal and his assistants appointed pursuant to § 27-36 shall, if authorized by the governing body of the county, city or town appointing the local fire marshal, have the authority to arrest, to procure and serve warrants of arrest and to issue summons in the manner authorized by general law for violation of fire prevention and fire safety laws and related ordinances. The authority granted in this section shall not be exercised by any local fire marshal or assistant until such person has satisfactorily completed a training course designed specifically for local fire marshals and their assistants, which course shall be approved by the Virginia Fire Services Board.

The Department of Fire Programs in cooperation with the Department of Criminal Justice Services shall have the authority to design, establish and maintain the required courses of instruction through such agencies and institutions as the Departments jointly may deem appropriate and to approve such other courses as such Departments determine appropriate.

The authority granted in this section shall not be construed to authorize a fire marshal or his assistants to wear or carry firearms.

##### **§ 27-34.2:1. Police powers of fire marshals.**

In addition to such other duties as may be prescribed by law, the local fire marshal and those assistants appointed pursuant to § 27-36 designated by the fire marshal shall, if authorized by the governing body of the county, city or town appointing the local fire marshal, have the same police powers as a sheriff, police officer or law-enforcement officer. The investigation and prosecution of all offenses involving hazardous materials, fires, fire bombings, bombings, attempts or threats to commit such offenses, false alarms relating to such offenses, possession and manufacture of explosive devices, substances and fire bombs shall be the responsibility of the fire marshal or his designee, if authorized by the governing body of the county, city or town appointing the local fire marshal. The police powers granted in this section shall not be exercised by any local fire marshal or assistant until such person has satisfactorily completed a course for fire marshals with police powers, designed by the Department of Fire Programs in cooperation with the Department of Criminal Justice Services, which course shall be approved by the Virginia Fire Services Board.

In addition, fire marshals with police powers shall continue to exercise those powers only upon satisfactory participation in in-service and advanced courses and programs designed by the Department of Fire Programs in cooperation with the Department of Criminal Justice Services, which courses shall be approved by the Virginia Fire Services Board.

##### **§ 27-34.3. Power to order immediate compliance with law, etc., or prohibit use of building or equipment.**

The local fire marshal shall, if authorized by the governing body of the county, city or town appointing him, have the authority to exercise the powers authorized by the Fire Prevention Code. However, an order prohibiting the use of a

building or equipment issued pursuant to this section shall not be effective beyond the date of a determination made by the authorities identified in and pursuant to § 27-97, regardless of whether or not said determination overrules, modifies or affirms the order of the local fire marshal. If an order of the local fire marshal issued pursuant to this section conflicts to any degree with an order previously issued by an authority identified in and pursuant to § 27-97, the latter order shall prevail. The local fire marshal shall immediately report to the authorities identified in § 27-97 on the issuance and content of any order issued pursuant to this section.

#### **§ 27-34.4. Inspection and review of plans of buildings under construction.**

Inspection of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the local fire marshal or official designated by the locality to enforce the Statewide Fire Prevention Code (§ 27-94 et seq.) in those localities which enforce the Statewide Fire Prevention Code.

#### **§ 27-35. Penalty for failure to discharge duty.**

For his failure to discharge any duty required of him by law the fire marshal shall be liable for each offense to a fine not exceeding \$100, to be imposed by the governing body and to be collected as other fines are collected.

#### **§ 27-36. Appointment, powers and duties of assistant fire marshals.**

The governing body of any county, city or town, or its designee may appoint one or more assistants, who, in the absence of the fire marshal, shall have the powers and perform the duties of the fire marshal.

#### **§ 27-37. Oath of fire marshal and assistants.**

The fire marshal and his assistants, before entering upon their duties, shall respectively take an oath, before any officer authorized to administer oaths, faithfully to discharge the duties of such office; the certificate of the oath shall be returned to and preserved by such governing body.

#### **§ 27-37.1. Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances.**

The fire marshal shall have the right, if authorized by the governing body of the county, city, or town appointing the fire marshal, to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in § 10.1-1400 or § 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water or soils of the county, city or town in order to investigate the extent and cause of any such release. If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate of the city or county where the property is located may issue an investigation warrant to the fire marshal authorizing him to enter such property for the purpose of determining the origin and source of the release. If the fire marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

#### **§ 27-94. Short title.**

This chapter may be cited as the "Virginia Statewide Fire Prevention Code Act."

#### **§ 27-95. Definitions.**

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them:

"Board" means the Board of Housing and Community Development.

"Code provisions" means the provisions of the Fire Prevention Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated from time to time by such Board.

"Enforcement agency" means the agency or agencies of any local governing body or the State Fire Marshal charged with the administration or enforcement of the Fire Prevention Code.

"Fire Prevention Code" or "Code" means the Statewide Fire Prevention Code.

"Fire prevention regulation" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents, wherever located, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions or other agencies.

"Fire Services Board" means the Virginia Fire Services Board as provided for in § 9.1-202.

"Fireworks" means any firecracker, torpedo, skyrocket, or other substance or object, of whatever form or construction, that contains any explosive or inflammable compound or substance, and is intended, or commonly known as fireworks, and which explodes, rises into the air or travels laterally, or fires projectiles into the air.

"Inspection warrant" means an order in writing, made in the name of the Commonwealth, signed by any judge or magistrate whose territorial jurisdiction encompasses the building, structure or premises to be inspected or entered, and directed to a state or local official, commanding him to enter and to conduct any inspection, examination, testing or collection of samples for testing required or authorized by the Virginia Statewide Fire Prevention Code.

"Local government" means the governing body of any city, county or town in this Commonwealth.

"Permissible fireworks" means any sparklers, fountains, Pharaoh's serpents, caps for pistols, or pinwheels commonly known as whirligigs or spinning jennies.

"State Fire Marshal" means the State Fire Marshal as provided for by § 36-139.2.

#### **§ 27-96. Statewide standards.**

The purposes of this chapter are to provide for statewide standards for optional local enforcement to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling, and use of substances, materials and devices, including fireworks, explosives and blasting agents, wherever located.

##### **§ 27-96.1. Chapter inapplicable to certain uses of fireworks.**

Unless prohibited by a local ordinance, the provisions of this chapter pertaining to fireworks shall not apply to the sale of or to any person using, igniting or exploding permissible fireworks on private property with the consent of the owner of such property.

##### **§ 27-96.2. Exemptions generally.**

The provisions of this chapter concerning fireworks shall have no application to any officer or member of the armed forces of this Commonwealth, or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces; nor shall it be applicable to the sale or use of materials or equipment, otherwise prohibited by this chapter, when such materials or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

#### **§ 27-97. Adoption of Fire Prevention Code.**

The Board of Housing and Community Development is hereby empowered to adopt and promulgate a Statewide Fire Prevention Code which shall be cooperatively developed with the Fire Services Board pursuant to procedures agreed to by the two Boards. The Fire Prevention Code shall prescribe regulations to be complied with for the protection of life and property from the hazards of fire or explosion and for the handling, storage, sale and use of fireworks, explosives or blasting agents, and shall provide for the administration and enforcement of such regulations. The Fire Prevention Code shall require manufacturers of fireworks or explosives, as defined in the Code, to register and report information concerning their manufacturing facilities and methods of operation within the Commonwealth in accordance with regulations adopted by the Board. In addition to conducting criminal background checks pursuant to § 27-97.2, the Board shall also establish regulations for obtaining permits for the manufacturing, storage, handling, use, or sales of fireworks or explosives. In the enforcement of such regulations, the enforcing agency may issue annual permits for such activities to any state regulated public utility. Such permits shall not apply to the storage, handling, or use of explosives or blasting agents pursuant to the provisions of Title 45.1.

The Fire Prevention Code shall prohibit any person, firm, or corporation from transporting, manufacturing, storing, selling, offering for sale, exposing for sale, or buying, using, igniting, or exploding any fireworks except for those persons, firms, or corporations that manufacture, store, market and distribute fireworks for the sole purpose of fireworks displays permitted by an enforcement agency or by any locality.

The Fire Prevention Code shall supersede fire prevention regulations heretofore adopted by local governments or other political subdivisions. Local governments are hereby empowered to adopt fire prevention regulations that are more restrictive or more extensive in scope than the Fire Prevention Code provided such regulations do not affect the manner of construction, or materials to be used in the erection, alteration, repair, or use of a building or structure, including the voluntary installation of smoke alarms and regulation and inspections thereof in commercial buildings where such smoke alarms are not required under the provisions of the Code.

In formulating the Fire Prevention Code, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations including, but not limited to, standards of the Southern Building Code Congress, the Building Officials and Code Administrators International, Inc., the National Fire Protection Association, and recognized organizations issuing standards for the protection of the public from the hazards of explosives and blasting agents. Such standards shall be based on the companion document to the model building code referenced by the Uniform Statewide Building Code.

The Fire Prevention Code shall require that buildings constructed prior to 1973 be maintained in accordance with state fire and public building regulations in effect prior to March 31, 1986, and that any building which is (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as a dormitory to house students by any public or private institution of higher education shall be required to comply with the provisions of § 36-99.3. The Fire Prevention Code shall also require annual fire drills in all buildings having floors used for human occupancy located more than seventy-five feet above the lowest level of fire department vehicle access. The drills shall be conducted by building staff personnel or the owner of the building in accordance with a plan approved by the appropriate fire official and shall not affect other current occupants. The Board may modify, amend or repeal any Code provisions as the public interest requires. Any such Code changes shall be developed in cooperation with the Fire Services Board pursuant to procedures agreed to by the two Boards.

#### **§ 27-97.1. Reports of stolen explosives.**

Any person holding a permit for the manufacture, storage, handling, use or sale of explosives issued in accordance with the provisions of the Code shall report to the office of the chief arson investigator for the Commonwealth as well as the chief local law-enforcement official any theft or other unauthorized taking or disappearance of any explosives or blasting devices from their inventory. An initial verbal report shall be made within three days of the discovery of the taking or disappearance. A subsequent written report shall be filed within such time, and in such form, as is specified by the chief arson investigator.

Failure to comply with the provisions of this section shall constitute a Class 1 misdemeanor punishable by the same penalties applicable to violations of the Fire Prevention Code.

#### **§ 27-97.2. Issuance of permit; background investigations.**

A. The Board or other issuing authority shall consider all permit applications for manufacturing, storage, handling, use or sales of explosives and applications for certification as a blaster, and may grant a valid permit or certification to applicants who meet the criteria established in the regulations of the Board. The Board shall require a background investigation, to include a national criminal history record information check, of all individual applicants and all designated persons representing an applicant that is not an individual, for a permit to manufacture, store, handle, use or sell explosives, and for any applicant for certification as a blaster. Each such applicant shall submit his fingerprints to the Board on a form provided by the Board and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. Any firm or company manufacturing, storing, using, or selling explosives shall provide to the enforcement agency, Board or other issuing authority the name of a representative responsible for (i) ensuring compliance with state law and regulations relating to blasting agents and explosives and (ii) applying for permits. The Board or other issuing authority shall deny any application for a permit or for certification as a blaster if the applicant or designated person representing an applicant has been convicted of any felony, whether such conviction occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, unless his civil rights have been restored by the Governor or other appropriate authority.

B. No permit under this section shall be required of any person holding a certification or permit issued pursuant to the provisions of Title 45.1.

#### **§ 27-98. Enforcement of Fire Prevention Code; appeals from decisions of local enforcing agencies; inspection of buildings.**

Any local government may enforce the Fire Prevention Code in its entirety or with respect only to those provisions of the Fire Prevention Code relating to open burning, fire lanes, fireworks, and hazardous materials. If a local governing body elects to enforce only those provisions of the Fire Prevention Code relating to open burning, it may do so in all or in any designated geographic areas of its jurisdiction. The State Fire Marshal shall also have the authority, in cooperation with any local governing body, to enforce the Code. The State Fire Marshal shall also have authority to enforce the Code in those jurisdictions in which the local governments do not enforce the Code and may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code in such jurisdictions. In addition, subject to the approval of the Board of Housing and Community Development, the State Fire Marshal may charge a fee to recover the actual cost of administering and enforcing the Code in jurisdictions for which he serves as the enforcement authority. The local governing body of any jurisdiction that enforces the Code may establish such procedures or requirements as may be necessary for the administration and enforcement of the Code. Appeals concerning the application of the Code by the local enforcing agency shall first lie to a local board of appeals and then to the State Building Code Technical Review Board. Appeals from the application of the Code by the State Fire Marshal shall be made directly to the State Building Code Technical Review Board as provided in § 36-108 et seq. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

##### **§ 27-98.1. Inspections of buildings, structures, properties and premises.**

In order to carry out the purposes of the Code and any regulations or standards adopted in pursuance thereof, the local fire official, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized, with the consent of the owner, operator, or agent in charge to enter a building, structure, property or premises for the purpose of conducting an inspection, examination, testing, or collection of samples for testing, during regular working hours and at other reasonable times, and in a reasonable manner, to determine if the building, structures, systems, machines, apparatus, devices, equipment, and materials stored, used or handled, and all pertinent conditions therein, are in compliance with the requirements, regulations or standards set forth in the Code.

##### **§ 27-98.2. Issuance of warrant.**

Search warrants for inspections or reinspection of buildings, structures, property, or premises subject to inspections pursuant to the Code, to determine compliance with regulations or standards set forth in the Code, shall be based upon a demonstration of probable cause and supported by affidavit. Such inspection warrants may be issued by any judge or magistrate having authority to issue criminal warrants whose territorial jurisdiction encompasses the building, structure, property or premises to be inspected or entered, if he is satisfied from the affidavit that there is probable cause for the issuance of an inspection warrant. No inspection warrant shall be issued pursuant to this chapter except upon probable cause, supported by affidavit, particularly describing the place, thing or property to be inspected, examined or tested and the purpose for which the inspection, examination, testing or collection of samples for testing is to be made. Probable



cause shall be deemed to exist if such inspection, examination, testing or collection of samples for testing are necessary to ensure compliance with the Fire Prevention Code for the protection of life and property from the hazards of fire or explosion. The supporting affidavit shall contain either a statement that consent to inspect, examine, test or collect samples for testing has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent in order to enforce effectively the fire safety laws, regulations or standards of the Commonwealth which authorize such inspection, examination, testing or collection of samples for testing. In the case of an inspection warrant based upon legislative or administrative standards for selecting buildings, structures, property or premises for inspections, the affidavit shall contain factual allegations sufficient to justify an independent determination by the judge or magistrate that the inspection program is based on reasonable standards and that the standards are being applied to a particular place in a neutral and fair manner. The issuing judge or magistrate may examine the affiant under oath or affirmation to verify the accuracy of any matter in the affidavit.

#### **§ 27-98.3. Duration of warrant.**

An inspection warrant shall be effective for the time specified therein, for a period of not more than seven days, unless extended or renewed by the judicial officer who signed and issued the original warrant. The judicial officer may extend or renew the inspection warrant upon application for extension or renewal setting forth the results which have been obtained or a reasonable explanation of the failure to obtain such results. The extension or renewal period of the warrant shall not exceed seven days. The warrant shall be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. The return shall list any samples taken pursuant to the warrant. After the expiration of such time, the warrant, unless executed, shall be void.

#### **§ 27-98.4. Conduct of inspections, examinations, testing, or collection of samples.**

No warrant shall be executed in the absence of the owner, operator or agent in charge of the particular building, structure, property or premises unless specifically authorized by the issuing judicial officer upon showing that such authority is reasonably necessary to effect the purposes of a statute or regulation being enforced. An entry pursuant to this warrant shall not be made forcibly, except that the issuing officer may expressly authorize a forcible entry (i) where facts are shown sufficient to create a reasonable suspicion of an immediate threat to an occupant of the particular building, structure, property, or premises, or, to the general safety and welfare of the public, or, to adjacent buildings, structures, properties or premises, or (ii) where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. If forcible entry is authorized, the warrant shall be issued jointly to the fire official and to a law-enforcement officer who shall accompany the fire official during the execution.

#### **§ 27-98.5. Review by courts.**

A. No court of the Commonwealth shall have jurisdiction to hear a challenge to the warrant prior to its return to the issuing judge or magistrate except as a defense in a contempt proceeding, unless the owner or custodian of the building, structure, property or premises to be inspected makes by affidavit a substantial preliminary showing accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in his affidavit for the inspection warrant and (ii) the false statement was necessary to the finding of probable cause. The court shall conduct such expeditious in camera view as the court may deem appropriate.

B. After the warrant has been executed and returned to the issuing judge, the validity of the warrant may be reviewed either as a defense to any citation issued by the fire official or otherwise by declaratory judgment action brought in a circuit court. In any such action, the review shall be confined to the face of the warrant and affidavits and supporting materials presented to the issuing judge unless the owner, operator, or agent in charge of whose building, structure, property or premises has been inspected makes a substantial showing by affidavit accompanied by an offer of proof that (i) a false statement, knowingly and intentionally, or with reckless disregard for the truth, was made in support of the warrant and (ii) the false statement was necessary to the finding of probable cause. The review shall only determine whether there is substantial evidence in the record supporting the decision to issue the warrant.

#### **§ 27-99. State buildings.**

The Fire Prevention Code shall be applicable to all state-owned buildings and structures. Every agency, commission or institution, including all institutions of higher education, of the Commonwealth shall permit, at all reasonable hours, a local fire official reasonable access to existing structures or a structure under construction or renovation, for the purposes of performing an informational and advisory fire safety inspection. The local fire official may submit, subsequent to performing such inspection, his findings and recommendations including a list of corrective actions

necessary to ensure that such structure is reasonably safe from the hazards of fire to the appropriate official of such agency, commission, or institution and the State Fire Marshal. Such agency, commission or institution shall notify, within sixty days of receipt of such findings and recommendations, the State Fire Marshal and the local fire official of the corrective measures taken to eliminate the hazards reported by the local fire official. The State Fire Marshal shall have the same power in the enforcement of this section as is provided for in § 27-98.

The State Fire Marshal may enter into an agreement as is provided for in § 36-139.4 with any local enforcement agency that enforces the Fire Prevention Code to enforce this section and to take immediate enforcement action upon verification of a complaint of an imminent hazard such as a chained or blocked exit door, improper storage of flammable liquids, use of decorative materials and overcrowding.

**§ 27-100. Violation a misdemeanor.**

It shall be unlawful for any owner or any other person, firm, or corporation, on or after the effective date of any Code provisions, to violate any provisions of the Fire Prevention Code. Any such violation shall be deemed a Class 1 misdemeanor, and any owner, or any other person, firm, or corporation convicted of such violation shall be punished in accordance with the provisions of § 18.2-11.

**§ 27-100.1. Seizure and destruction of certain fireworks.**

Any law-enforcement officer arresting any person for a violation of this chapter related to fireworks shall seize any article of fireworks in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction be entered against such person, the court shall order destruction of such articles upon expiration of the time allowed for appeal of such judgment of conviction.

**§ 27-101. Injunction upon application.**

Every court having jurisdiction under existing or any future law is empowered to and shall, upon the application of the local enforcing agency or State Fire Marshal, issue either a mandatory or restraining injunction in aid of the enforcement of, or in prevention of the violation of, any of the provisions of this law or any valid rule or regulation made in pursuance thereof. The procedure for obtaining any such injunction shall be in accordance with the laws then current governing injunctions generally except that the enforcing agency shall not be required to give bond as a condition precedent to obtaining an injunction.

**§ 36-70. Short title.**

The short title of the law embraced in this chapter is the Virginia Industrialized Building Safety Law.

**§ 36-71.1. Definitions.**

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Board" means the Board of Housing and Community Development.

"Compliance assurance agency" means an architect or professional engineer registered in Virginia, or an organization, determined by the Department to be specially qualified by reason of facilities, personnel, experience and demonstrated reliability, to investigate, test and evaluate industrialized buildings; to list such buildings complying with standards at least equal to those promulgated by the Board; to provide adequate follow-up services at the point of manufacture to ensure that production units are in full compliance; and to provide a label as evidence of compliance on each manufactured section or module.

"Department" means the Department of Housing and Community Development.

"Industrialized building" means a combination of one or more sections or modules, subject to state regulations and including the necessary electrical, plumbing, heating, ventilating and other service systems, manufactured off-site and

transported to the point of use for installation or erection, with or without other specified components, to comprise a finished building. Manufactured homes defined in § 36-85.3 and certified under the provisions of the National Manufactured Housing Construction and Safety Standards Act shall not be considered industrialized buildings for the purpose of this law.

"Registered" means that an industrialized building displays a registration seal issued by the Department of Housing and Community Development.

"The law" or "this law" means the Virginia Industrialized Building Safety Law as provided in this chapter.

#### **§ 36-73. Authority of Board to promulgate rules and regulations.**

The Board shall from time to time promulgate rules and regulations prescribing standards to be complied with in industrialized buildings for protection against the hazards thereof to safety of life, health and property and prescribing procedures for the administration, enforcement and maintenance of such rules and regulations. The standards shall be reasonable and appropriate to the objectives of this law and within the guiding principles prescribed by the General Assembly in this law and in any other law in pari materia. The standards shall not be applied to manufactured homes defined in § 36-85.3.

In making rules and regulations, the Board shall have due regard for generally accepted safety standards as recommended by nationally recognized organizations, such as the Building Officials and Code Administrators International, Inc., the Southern Building Codes Congress, the International Conference of Building Officials, the National Fire Protection Association and the Council of American Building Officials.

Where practical, the rules and regulations shall be stated in terms of required levels of performance, so as to facilitate the prompt acceptance of new building materials and methods. Where generally recognized standards of performance are not available, the rules and regulations of the Board shall provide for acceptance of materials and methods whose performance has been found by the Department, on the basis of reliable test and evaluation data presented by the proponent, to be substantially equal in safety to those specified.

#### **§ 36-74. Notice and hearing on rules and regulations.**

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending or repealing any rules or regulations under this law.

#### **§ 36-75. Amendment, etc., and annual review of rules and regulations.**

The Board may modify, amend or repeal any rules or regulations as the public interest requires.

The Administrator shall make an annual review of the rules and regulations, considering the housing needs and supply in the Commonwealth and factors that tend to impede or might improve the availability of housing for all citizens of the Commonwealth and shall recommend to the Board such modifications, amendments or repeal as deemed necessary.

#### **§ 36-76. Printing and distribution of rules and regulations.**

The Administrator shall have printed from time to time, and keep in pamphlet form, all rules and regulations prescribing standards for industrialized buildings. Such pamphlets shall be furnished upon request to members of the public.

#### **§ 36-77. Rules and regulations to be kept in office of Administrator.**

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Administrator, accessible to the public.

#### **§ 36-78. Effective date and application of rules and regulations.**

No rules or regulations shall be made effective earlier than twelve months after June 26, 1970. No person, firm or corporation shall offer for sale or rental or sell or rent any industrialized buildings which have been constructed after the effective date of such rule or regulation unless it conforms with said rules and regulations. Any industrialized building

constructed before the effective date of these regulations shall remain subject to the ordinances, laws or regulations in effect at the time such industrialized building was constructed, but nothing in this chapter shall prevent the enactment or adoption of additional requirements where necessary to provide for adequate safety of life, health and property.

**§ 36-79. Effect of label of compliance assurance agency.**

Any industrialized building shall be deemed to comply with the standards of the Board when bearing the label of a compliance assurance agency.

**§ 36-80. Modifications to rules and regulations.**

The Administrator shall have the power upon appeal in specific cases to authorize modifications to the rules and regulations to permit certain specified alternatives where the objectives of this law can be fulfilled by such other means.

**§ 36-81. Application of local ordinances; enforcement of chapter by local authorities.**

Registered industrialized buildings shall be acceptable in all localities as meeting the requirements of this law, which shall supersede the building codes and regulations of the counties, municipalities and state agencies. The local building official is authorized to and shall determine that any unregistered industrialized building shall comply with the provisions of this law. Local requirements affecting industrialized buildings, including zoning, utility connections, preparation of the site, and maintenance of the unit, shall remain in full force and effect. All local building officials are authorized to and shall enforce the provisions of this law, and the rules and regulations made in pursuance thereof.

**§ 36-82. Right of entry and examination by Administrator; notice of violation.**

The Administrator shall have the right, at all reasonable hours, to enter into any industrialized building upon permission of any person who has authority or shares the use, access and control over the building, or upon request of local officials having jurisdiction, for examination as to compliance with the rules and regulations of the Board. Whenever the Administrator shall find any violation of the rules and regulations of the Board, he shall order the person responsible therefor to bring the building into compliance, within a reasonable time, to be fixed in the order.

**§ 36-82.1. Appeals.**

Appeals from local building officials, compliance assurance agencies, or manufacturers of industrialized buildings concerning the Department's application of the rules and regulations of the Industrialized Building Safety Law shall be heard by the State Building Code Technical Review Board established by § 36-108. The Technical Review Board shall have the power and duty to render its decision in any such appeal, which decision shall be final if no further appeal is made.

**§ 36-83. Violation a Class 1 misdemeanor; penalty.**

It shall be unlawful for any person, firm or corporation, on or after June 26, 1970, to violate any provisions of this law or the rules and regulations made pursuant hereto. Any person, firm or corporation violating any of the provisions of this law, or the rules and regulations made hereunder, shall be deemed guilty of a Class 1 misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.

**§ 36-84. Clerical assistants to Administrator; equipment, supplies and quarters.**

The Administrator may employ such permanent or temporary, clerical, technical and other assistants as is found necessary or advisable for the proper administration of this law, and may fix their compensation and may likewise purchase equipment and supplies deemed necessary.

**§ 36-85. Fee for registration seal; use of proceeds.**

The Board, by rule and regulation, shall establish a fee for each approved registration seal. The proceeds from the sale of such seals shall be used to pay the costs incurred by the Department in the administration of this law.

**§ 36-85.1. Refund of fee paid for registration seal.**

Any person or corporation having paid the fee for an approved registration seal which it will not use may, unless and except as otherwise specifically provided, within one year from the date of the payment of any such fee, apply to the Administrator for a refund, in whole or in part, of the fee paid; provided that no payment shall be recovered unless the approved registration seal is returned, unused and in good condition, to the Administrator. Such application shall be by notarized letter.

#### **§ 36-85.2. Short title.**

The short title of the law embraced in this chapter is the Virginia Manufactured Housing Construction and Safety Standards Law.

#### **§ 36-85.3. Definitions.**

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Administrator" means the Director of the Department of Housing and Community Development or his designee.

"Any person" shall, in addition to referring to a natural person, include any partnership, corporation, joint stock company or any association whether incorporated or unincorporated.

"Board" means the Board of Housing and Community Development.

"Dealer" means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

"Defect" means a failure to comply with an applicable federal manufactured home construction and safety standard that renders the manufactured home or any part of the home unfit for the ordinary use for which it was intended, but does not result in an imminent risk of death or severe personal injury to occupants of the affected home.

"Department" means the Department of Housing and Community Development.

"Distributor" means any person engaged in the sale and distribution of manufactured homes for resale.

"Federal Act" means the National Manufactured Housing Construction and Safety Standards Act of 1974 as amended (42 U.S.C. § 5401 et seq.).

"Federal Regulations" means the Federal Manufactured Home Procedural and Enforcement Regulations.

"Federal Standards" means the Federal Manufactured Home Construction and Safety Standards.

"HUD" means the United States Department of Housing and Urban Development.

"Imminent safety hazard" means a hazard that presents an imminent risk of death or severe personal injury.

"Manufactured home" means a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

"Manufactured home construction" means all activities relating to the assembly and manufacture of a manufactured home including but not limited to those relating to durability, quality, and safety.

"Manufactured home safety" means the performance of a manufactured home in such a manner that the public is protected against unreasonable risk of the occurrence of accidents due to the design or construction of the home, or any unreasonable risk of death or injury to the user if such accidents do occur.

"Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes.

"Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

"Secretary" means the Secretary of the United States Department of Housing and Urban Development.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

"State Administrative Agency" or "SAA" means the Department of Housing and Community Development which is responsible for the administration and enforcement of this law throughout Virginia and of the plan authorized by § 36-85.5.

"The law" or "this law" means the Virginia Manufactured Housing Construction and Safety Standards Law as embraced in this chapter.

#### **§ 36-85.5. Enforcement.**

The Department of Housing and Community Development is designated as the agency of this State Administrative Agency plan approved by HUD. The Administrator is authorized to perform the following functions:

1. Enforce the Federal Standards with respect to all manufactured homes manufactured in Virginia;
2. Assure that no state or local standard conflicts with those Federal Standards governing manufactured housing construction and performance;
3. Enter and inspect factories, warehouses, or establishments in which manufactured homes are manufactured, stored, or offered for sale as may be required;
4. Seek enforcement of the civil and criminal penalties established by § 36-85.12 of this law;
5. Carry out the notification and correction procedures specified in the Federal Regulations, including holding such hearings and making such determinations as may be necessary and requiring manufacturers in the Commonwealth to provide such notifications and corrections as may be required by the Federal Regulations;
6. Employ such qualified personnel as may be necessary to carry out the approved plan for enforcement and otherwise administer this law;
7. Require manufacturers, distributors, and dealers in the Commonwealth to make reports to the Secretary in the same manner and to the same extent as if such plan were not in effect;
8. Participate, advise, assist, and cooperate with other state, federal, public, and private agencies in carrying out the approved plan for enforcement;
9. Provide for participation by the SAA in any interstate monitoring activities which may be carried out on behalf of HUD;
10. Receive consumer complaints and take such actions on the complaints as may be required by the Federal Regulations;
11. Give satisfactory assurance to HUD that the SAA has and will have the legal authority necessary for enforcement of the Federal Standards;
12. Take such other actions as may be necessary to comply with Federal Regulations and Standards referenced in this law.

#### **§ 36-85.6. Federal Standards and Regulations.**

The Federal Standards shall be the sole standard applicable regarding design, construction, or safety of any manufactured home as defined by this law. The Administrator shall accept manufactured home plan approvals from state or private agencies authorized by HUD to conduct plan reviews and approvals. The Administrator shall accept certifications of compliance with the Federal Standards for homes manufactured in other states when such certifications are made according to Federal Regulations.

#### **§ 36-85.7. Authority of Board to adopt rules and regulations.**

The Board shall from time to time adopt, amend, or repeal such rules and regulations as are necessary to implement this law in compliance with the Federal Act and the Federal Standards and Regulations enacted by HUD.



**§ 36-85.8. Notice and hearing on rules and regulations.**

The Board shall comply with all applicable requirements of the Administrative Process Act (§ 2.2-4000 et seq.) when adopting, amending, or repealing any rules and regulations under this law.

**§ 36-85.9. Printing and distribution of rules and regulations.**

The Administrator shall have printed and keep in pamphlet form all rules and regulations prescribing the implementation and enforcement of this law. Such pamphlets shall be furnished to members of the public upon request.

**§ 36-85.10. Rules and regulations to be kept in office of Department.**

A true copy of all rules and regulations adopted and in force shall be kept in the office of the Department, accessible to the public.

**§ 36-85.11. Application of local ordinances; enforcement of chapter by local authorities.**

Manufactured homes displaying the certification label as prescribed by the Federal Standards shall be accepted in all localities as meeting the requirements of this law, which shall supersede the building codes of the counties, municipalities and state agencies. Local zoning ordinances and other land use controls that do not affect the manner of construction or installation of manufactured homes shall remain in full force and effect. Site preparation, utility connections, skirting installation, and maintenance of the manufactured home shall meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.).

Notwithstanding the above, structures meeting the definition of "manufactured home" set forth in § 36-85.3 shall be defined in local zoning ordinances as "manufactured homes." The term "manufactured home" shall be defined in local zoning ordinances solely as it is defined in § 36-85.3.

All local building officials are authorized to and shall enforce the regulations adopted by the Board in accordance with this law.

**§ 36-85.12. Violation; civil and criminal penalties.**

It shall be unlawful for any person, firm or corporation, to violate any provisions of this law, the rules and regulations enacted under authority of this law, or the Federal Law and Regulations. Any person, firm or corporation violating any provision of said laws, rules and regulations, or any final order issued thereunder, shall be liable for civil penalty not to exceed \$1,000 for each violation. Each violation shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or to perform an act required by the legislation or regulations. The maximum civil penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation.

An individual or a director, officer, or agent of a corporation who knowingly and willfully violates Section 610 of the National Manufactured Housing Construction and Safety Standards Act in a manner which threatens the health or safety of any purchaser shall be deemed guilty of a Class 1 misdemeanor and upon conviction fined not more than \$1,000 or imprisoned not more than one year, or both.

**§ 36-85.13. Staff, equipment or supplies.**

The Administrator may employ permanent or temporary technical, clerical and other assistants as is necessary or advisable for the proper administration of this law. The Administrator may purchase equipment and supplies deemed necessary for the staff.

**§ 36-85.14. Fees.**

The Board may establish inspection fees to be paid by manufacturers to cover the costs of monitoring inspections. Such fees shall be in the amount and manner as set out in the Federal Regulations. The SAA shall participate in the fee distribution program established by HUD and is authorized to enter into and execute a Cooperative Agreement with HUD for such participation.

### **§ 36-85.15. Validity.**

If any part or provision of this law, or the application to any person or circumstance, is held to be illegal or invalid, the validity of the remainder of this law, or the application to other persons or circumstances, shall not be affected by such ruling.

### **§ 36-85.16. Definitions.**

As used in this chapter, unless a different meaning or construction is clearly required by the context:

"Board" means the Virginia Manufactured Housing Board.

"Buyer" means the person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

"Claimant" means any person who has filed a verified claim under this chapter.

"Code" means the appropriate standards of the Virginia Uniform Statewide Building Code and the Industrialized Building and Manufactured Home Safety Regulations adopted by the Board of Housing and Community Development and administered by the Department of Housing and Community Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974 for manufactured homes.

"Defect" means any deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any failure of any structural element, utility system or the inclusion of a component part of the manufactured home which fails to comply with the Code.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development, or his designee.

"Fund" or "recovery fund" means the Virginia Manufactured Housing Transaction Recovery Fund.

"Manufactured home" means a structure constructed to federal standards, transportable in one or more sections, which, in the traveling mode, is 8 feet or more in width and is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Manufactured home broker" or "broker" means any person, partnership, association or corporation, resident or nonresident, who, for compensation or valuable consideration, sells or offers for sale, buys or offers to buy, negotiates the purchase or sale or exchange, or leases or offers to lease used manufactured homes that are owned by a party other than the broker.

"Manufactured home dealer" or "dealer" means any person, resident or nonresident, engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in Virginia. Any person who buys, sells, or deals in three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

"Manufactured home manufacturer" or "manufacturer" means any persons, resident or nonresident, who manufacture or assemble manufactured homes for sale in Virginia.

"Manufactured home salesperson" or "salesperson" means any person who for compensation or valuable consideration is employed either directly or indirectly by, or affiliated as an independent contractor with, a manufactured home dealer, broker or manufacturer to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale or exchange, or to lease or offer to lease new or used manufactured homes.

"New manufactured home" means any manufactured home that (i) has not been previously sold except in good faith for the purpose of resale, (ii) has not been previously occupied as a place of habitation, (iii) has not been previously used for commercial purposes such as offices or storage, and (iv) has not been titled by the Virginia Department of Motor Vehicles and is still in the possession of the original dealer. If the home is later sold to another dealer and then sold to a consumer within two years of the date of manufacture, the home is still considered new and must continue to meet all state warranty requirements. However, if a home is sold from the original dealer to another dealer and it is more than two years after the date of manufacture, and it is then sold to a consumer, the home must be sold as "used" for warranty purposes. Notice of the "used" status of the manufactured home and how this status affects state warranty requirements must be provided, in writing, to the consumer prior to the closing of the sale.

"Person" means any individual, natural person, firm, partnership, association, corporation, legal representative, or other recognized legal entity.

"Regulant" means any person, firm, corporation, association, partnership, joint venture, or any other legal entity required by this chapter to be licensed by the Board.

"Responsible party" means a manufacturer, dealer, or supplier of manufactured homes.

"Set-up" means the operations performed at the occupancy site which render a manufactured home fit for habitation. Such operations include, but are not limited to, transportation, positioning, blocking, leveling, supporting, anchoring, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the State Corporation Commission.

"Supplier" means the original producer of completed components, including refrigerators, stoves, water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or a dealer for installation in the manufactured home prior to sale to a buyer.

"Used manufactured home" means any manufactured home other than a new home as defined in this section.

#### **§ 36-85.17. Manufactured Housing Board created; membership.**

A. There is hereby created the Virginia Manufactured Housing Board within the Department of Housing and Community Development. The Board shall be composed of nine members appointed by the Governor subject to confirmation by the General Assembly. The members shall include two manufactured home manufacturers, two manufactured home dealers, the Director, and four members representing the public who have knowledge of the industry.

B. The Board shall elect from its members a chairman and a vice-chairman for terms of two years. The members of the Board shall initially be appointed for four-year terms. Upon expiration of the initial terms, one manufacturer, one dealer and two members representing the public shall be appointed for two-year terms while one manufacturer, one dealer and two members representing the public shall be appointed for four-year terms. All appointments thereafter shall be for four-year terms. In the event of any vacancy, the Governor shall appoint a replacement to serve the unexpired term. Meetings shall be held at the call of the chairman or whenever two members so request.

C. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

#### **§ 36-85.18. Powers and duties of Manufactured Housing Board.**

The Virginia Manufactured Housing Board shall have the following powers and duties:

1. To issue licenses to manufacturers, dealers, brokers, and salespersons;
2. To require that an adequate recovery fund be established for all regulants;
3. To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry;
4. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) as are necessary to carry out the provisions of this chapter;

5. To make case decisions in accordance with the Administrative Process Act as are necessary to carry out the provisions of this chapter; and
6. To levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

**§ 36-85.19. License required; penalty.**

A. It shall be unlawful and constitute the commission of a Class 1 misdemeanor for any manufactured home manufacturer, dealer, broker, or salesperson to be engaged in business as such in this Commonwealth without first obtaining a license from the Board, as provided in this chapter.

Application for such license shall be made to the Board at such time, in such form, and contain such information as the Board shall require, and shall be accompanied by required fees established by the Board by regulation in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The Board shall levy and collect fees that are sufficient to cover the expenses for the administration of this chapter by the Board and the Department. Such fees may be levied and collected on a per unit sold basis, a percentage basis, an annual per dealer basis, or a combination thereof.

In such application, the Board shall require information relating to the matters set forth in § 36-85.20 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All such information shall be considered by the Board in determining the fitness of the applicant to engage in the business for which the license is sought.

All licenses that are granted shall expire, unless revoked or suspended, on the annual anniversary of the date of issuance.

Every regulant under this chapter shall obtain a renewal of a license for the ensuing year, by application, accompanied by the required fee. Upon failure to renew, the license shall automatically expire. Such license may be renewed upon payment of the prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, broker, or salesperson after expiration of the license and is otherwise eligible for a license under the provisions of this chapter.

Special licenses, not to exceed ten days in duration, may be issued for each temporary place of business, operated or proposed by the regulant, that is not contiguous to other premises for which a license is issued. The fee for a special license shall be established by the Board, provided that no such license shall be required for a place of business operated by a regulant that is used exclusively for storage.

B. Notwithstanding any other provisions of this chapter, the Board may provide by regulation that a manufactured home salesperson will be allowed to engage in business during the time period after applying for a license but before such license is granted.

**§ 36-85.20. Grounds for denying, suspending or revoking license.**

A license may be denied, suspended, or revoked by the Board on any one or more of the following grounds:

1. Material misstatement in application for license;
2. Failure to pay required assessment to the Manufactured Housing Recovery Fund;
3. Engaging in the business of a manufactured home manufacturer, dealer, broker, or salesperson without first obtaining a license from the Board;
4. Failure to comply with the warranty service obligations and claims procedure established by this chapter;
5. Failure to comply with the set-up and tie-down requirements of the Code;
6. Having knowingly failed or refused to account for or to pay over moneys or other valuables belonging to others which have come into the regulant's possession arising from the sale of manufactured homes;
7. Use of unfair methods of competition or unfair or deceptive commercial acts or practices;
8. Failure to appear before the Board upon due notice or to follow directives of the Board issued pursuant to this chapter;
9. Employing unlicensed retail salespersons;
10. Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this chapter or selling to dealers not licensed pursuant to this chapter manufactured homes which are to be sold in the Commonwealth to buyers as defined in this chapter;

11. Having had a license revoked, suspended, or denied by the Board under this chapter; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this Commonwealth, would have been a violation under this chapter;
12. Defrauding any buyer, to the buyer's damage, or any other person in the conduct of the regulant's business; or
13. Failure to comply with any provisions of this chapter.

**§ 36-85.21. Notice and hearing.**

The Board shall not suspend, revoke, or deny a license or refuse the renewal of a license, or impose a civil penalty, until a written notice of the complaint has been furnished to the regulant or applicant against whom the same is directed, and a hearing thereon has been held before the Board. Reasonable written notice of the time and place of the hearing shall be given to the regulant or applicant by certified mail to his last known address, as shown on the license or other record of information in possession of the Board. At any such hearing, the regulant or applicant shall have the right to be heard in person or through counsel. After the hearing, the Board shall have the power to deny, suspend, revoke or refuse to renew the license in question for violation of the provisions of this chapter. Immediate notice of any such action by the Board shall be given to the regulant or applicant in the same manner as provided herein for furnishing notice of hearing.

In the event of a conflict between the provisions of this section and the Administrative Process Act (§ 2.2-4000 et seq.), the provisions of the Administrative Process Act shall govern.

**§ 36-85.22. Set-up requirements; effect on insurance policies.**

Manufactured homes shall be set-up in accordance with the Code.

In the event that a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage of a nature that indicated the manufactured home was not set-up in the manner required by this section, the insurer issuing the homeowner's insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set-up.

**§ 36-85.23. Warranties.**

Each manufacturer, dealer, and supplier of manufactured homes shall warrant each new manufactured home sold in this Commonwealth, and the dealer shall warrant the set-up of each manufactured home if performed by or contracted for by the dealer, in accordance with the warranty requirements prescribed by this section for a period of at least twelve months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, and supplier are as follows:

1. The manufacturer warrants that all structural elements, plumbing systems, heating, cooling (if any), and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from defect.
2. The dealer warrants:
  - a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from defects. Alterations or modifications made by the dealer, without written permission of the manufacturer, shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any damage resulting therefrom.
  - b. That set-up operations performed by the dealer or by persons under contract to the dealer on the manufactured home are accomplished in compliance with the applicable Code standards for installation of manufactured homes.
  - c. That during the course of set-up and transportation of the manufactured home performed by the dealer or by persons under contract to the dealer, defects do not occur to the manufactured home.
3. The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

**§ 36-85.24. Presenting claims for warranties and defects.**

Whenever a claim for a warranty service or about a defect is made to a regulant, it shall be handled as provided by this chapter. A record shall be made of the name and address of each claimant and the date, substance, and disposition of

each claim about a defect. The regulant may request that a claim be made in writing, but nevertheless shall record it as provided above, and may not delay service pending receipt of the written claim.

When the regulant notified is not the responsible party, he shall, in writing, immediately notify the claimant of that fact, and shall also, in writing, immediately notify the responsible party of the claim. When a responsible party is asked to remedy defects, such party may not fail to remedy those defects because another responsible party may also be responsible. Nothing herein shall prevent a responsible party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

Within the time limits provided in this chapter, the regulant shall either resolve the claim or determine that it is not justified. At any time a regulant determines that a claim for service is not justified in whole or part, he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board. The complete mailing address of the Board shall be provided in the notice. Within five working days of receipt of a complaint, the Board shall send a complete copy thereof to the Director.

#### **§ 36-85.25. Warranty service.**

When a service agreement exists between or among a manufacturer, dealer, and supplier to provide warranty service, the agreement shall specify which such responsible party is to remedy warranty defects. Every such service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided in this chapter, of responsibility to perform warranty service. However, any responsible party undertaking such an agreement to perform the warranty service obligations of another shall thereby become responsible both to that other responsible party and to the buyer for his failure to adequately perform as agreed.

When no service agreement exists for warranty service, the responsible party as designated by the provisions of this chapter is responsible for remedying the warranty defects.

A defect shall be remedied within forty-five days of receipt of the written notification of the warranty claim, unless the claim is unreasonable or a bona fide reason exists for not remedying the defect within the forty-five-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this section, defects which constitute an imminent safety hazard to life and health shall be remedied within three days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock or leaking gas; or (iv) major structural failure. The Board may suspend this three-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

When the person remedying the defect is not the responsible party as designated by the provisions of this chapter, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct which coerces or requires a nonresponsible party to perform warranty service is a violation of this chapter.

Warranty service shall be performed at the site at which the manufactured home is initially delivered to the buyer, except for components which can be removed for service without undue inconvenience to the buyer.

Any responsible party shall have the right to complain to the Board when warranty service obligations under this chapter are not being enforced.

#### **§ 36-85.26. Dealer alterations.**

A. No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this chapter or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection D. An unauthorized alteration or modification performed by a dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

B. An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alterations or modifications. A statement to this effect,



together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in the manufacturer being responsible for the warranty.

C. The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which define the alterations or modifications which must be made by qualified personnel in accordance with the applicable standards of the Code. The Board may require qualified personnel for those alterations and modifications which could impair the structural integrity or safety of the manufactured home.

D. In order to be designated as a person qualified to alter or modify a manufactured home, a person shall comply with state licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

#### **§ 36-85.27. Determining length of manufactured homes.**

In any advertisement or other communication regarding the length of a manufactured home, a regulant shall not include the length of the towing assembly (hitch) in describing the length of the home.

#### **§ 36-85.28. Limitation on damages; disclosure to buyer.**

A. If a buyer fails to accept delivery of a manufactured home, the manufactured home dealer may retain actual damages according to the following terms:

1. If the manufactured home is in the dealer's stock and is not specially ordered from the manufacturer for the buyer, the maximum retention shall be \$500.
2. If the manufactured home is a single section unit and is specially ordered from the manufacturer for the buyer, the maximum retention shall be \$1,000.
3. If the manufactured home is larger than a single section unit and is special ordered for the buyer from the manufacturer, the maximum retention shall be \$5,000.

B. A dealer shall provide a written disclosure to the buyer at the time of the sale of a manufactured home alerting the buyer to the actual damages that may be assessed of the buyer, as listed in subsection A, for failure to take delivery of the manufactured home as purchased.

#### **§ 36-85.29. Inspection of service records.**

The Board is authorized to inspect the pertinent service records of a manufacturer, dealer, supplier, or broker relating to a written warranty claim or complaint made to the Board against such manufacturer, dealer, supplier, or broker. Every regulant shall send to the Board upon request and within ten days, a true copy of every document or record pertinent to any complaint or claim for service.

#### **§ 36-85.30. Other remedies not excluded.**

Nothing in this chapter, nor any decision by the Board, shall limit any right or remedy available to the buyer through common law or under any other statute.

#### **§ 36-85.31. Recovery fund to be established.**

A. Each manufactured home manufacturer, dealer, broker and salesperson operating in the Commonwealth of Virginia shall be required to pay an initial assessment fee as set forth in subsection B to the Virginia Manufactured Housing Transaction Recovery Fund. Thereafter, assessment fees shall be assessed as necessary to achieve and maintain a minimum fund balance of \$250,000.

B. Each applicant approved by the Board for a license as a manufactured home manufacturer, dealer, broker, or salesperson in accordance with the provisions of Article 1 (§ 36-85.16 et seq.) of this chapter shall pay into the fund the following assessment fees:

1. For a manufacturer - \$4,000 for each separate manufacturing facility payable in one installment or \$4,400 payable at \$2,200 per year for two years.
2. For a dealer - \$500 per retail location.
3. For a broker - \$500 per sales office.
4. For a salesperson - \$50 per individual.

C. All assessment fees collected under this article shall be deposited in the state treasury and the State Treasurer shall credit the amount paid into a special revenue fund from which appropriations may be utilized by the Board in

accordance with the express purposes set forth in this article. The assets of the fund shall be invested in accordance with the advice of the State Treasurer. Interest earned on deposits constituting this fund shall accrue to the fund or may be used for the purposes of providing educational programs to the consumer about manufactured housing.

**§ 36-85.32. Recovery from fund generally.**

Any person who suffers any loss or damage by any act of a regulant that constitutes a violation of this chapter shall have the right to institute an action to recover from the recovery fund.

Upon a finding by the Board that a violation has occurred, the Board shall direct the responsible manufacturer, dealer, broker, or salesperson to pay the awarded amount to the claimant. If such amount is not paid within thirty days following receipt of the written decision of the Board and no appeal has been filed in court, the Board shall, upon request of the claimant, pay from the recovery fund the amount of the award to the claimant provided that:

1. The maximum claim of one claimant against the fund because of a single violation by one regulant shall be limited to \$20,000;
2. The fund balance is sufficient to pay the award;
3. The claimant has assigned the Board all rights and claims against the regulant; and
4. The claimant agrees to subrogate to the Board all rights of the claimant to the extent of payment.

The aggregate of claims against the fund for violations by any one regulant shall be limited by the Board to \$75,000 per manufacturer, \$35,000 per dealer, \$35,000 per broker, and \$25,000 per salesperson during any license period. If a claim has been made against the fund, and the Board has reason to believe there may be additional claims against the fund from other transactions involving the same regulant, the Board may withhold any payments from the fund involving such regulant for a period of not more than one year from the date on which the claimant is approved by the Board for an award from the fund. After this one-year period, if the aggregate of claims against the regulant exceeds the above limitations, said amount shall be prorated by the Board among the claimants and paid from the fund in proportion to the amounts of their awards remaining unpaid.

The amount of damages awarded by the Board shall be limited to actual, compensatory damages and shall not include attorney's fees for representation before the Board.

**§ 36-85.33. Revocation of license upon payment from fund.**

Upon payment to a claimant from the fund, the Board shall immediately revoke the license of the regulant whose conduct resulted in this payment. Any regulant whose license is revoked shall not be eligible to apply for a license under this chapter until the regulant has repaid in full the amount paid from the fund on his account, plus interest.

**§ 36-85.34. Disciplinary action by Board.**

The Board may take disciplinary action against any regulant for any violation of this chapter or the regulations of the Board. Full repayment of the amount paid from the fund on a regulant's account shall not nullify or modify the effect of any disciplinary proceeding against that regulant for any violation.

**§ 36-85.35. Appeals from decision of the Board.**

Appeals from a decision of the Board shall be to a circuit court with jurisdiction in the Commonwealth. An appeal must be made within thirty days of the date of the Board's order. Once made, an appeal shall stay the Board's order. Neither the regulant nor the Board shall be required to pay damages to the claimant until such time as a final order of the court is issued. The court may award reasonable attorney's fees and court costs to be paid by the recovery fund. Except as provided to the contrary herein, appeals pursuant to this section shall be in conformance with the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 36-85.36. Recovery fund administrative regulations.**

The Board is authorized to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) consistent with this chapter for the administration of the fund to assure the satisfaction of claims.

## **§ 36-97. Definitions.**

As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

"Board" means the Board of Housing and Community Development.

"Review Board" means the State Building Code Technical Review Board.

"Building Code" means the Uniform Statewide Building Code and building regulations adopted and promulgated pursuant thereto.

"Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

"Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

"Municipality" means any city or town in this Commonwealth.

"Local governing body" means the governing body of any city, county or town in this Commonwealth.

"Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of the Building Code and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents.

"State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

"Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Building" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

"Farm building or structure" means a building or structure not used for residential purposes, located on property where farming operations take place, and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling or sale of agricultural, horticultural, floricultural or silvicultural products produced in the farm;
2. Sheltering, raising, handling, processing or sale of agricultural animals or agricultural animal products;
3. Business or office uses relating to the farm operations;
4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery or equipment on the farm;
5. Storage or use of supplies and materials used on the farm; or
6. Implementation of best management practices associated with farm operations.

"Construction" means the construction, reconstruction, alteration, repair or conversion of buildings and structures.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of a building or structure.

"Director" means the Director of the Department of Housing and Community Development.

"Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, storage tanks (underground and aboveground), trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning. "Structure" shall not include roadway tunnels and bridges owned by the Department of Transportation, which shall be governed by construction and design standards approved by the Commonwealth Transportation Board.

"Department" means the Department of Housing and Community Development.

**§ 36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions.**

The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.

However, such Code shall not supersede the regulations of other state agencies which require and govern the functional design and operation of building related activities not covered by the Uniform Statewide Building Code including but not limited to (i) public water supply systems, (ii) waste water treatment and disposal systems, and (iii) solid waste facilities. Nor shall state agencies be prevented from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of the Uniform Statewide Building Code.

Such Code also shall supersede the provisions of local ordinances applicable to single-family residential construction that (a) regulate dwelling foundations or crawl spaces, (b) require the use of specific building materials or finishes in construction, or (c) require minimum surface area or numbers of windows; however, such Code shall not supersede proffered conditions accepted as a part of a rezoning application, conditions imposed upon the grant of special exceptions, special or conditional use permits or variances, conditions imposed upon a clustering of single-family homes and preservation of open space development through standards, conditions, and criteria established by a locality pursuant to subdivision 8 of § 15.2-2242 or subdivision A 12 of § 15.2-2286, or land use requirements in airport or highway overlay districts, or historic districts created pursuant to § 15.2-2306, or local flood plain regulations adopted as a condition of participation in the National Flood Insurance Program.

**§ 36-98.01. Mechanics' lien agent included on building permit for residential property at request of applicant.**

In addition to any information required by the Uniform Statewide Building Code, a building permit issued for any one- or two-family residential dwelling unit shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1. If the designation of a mechanics' lien agent is not so requested by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated."

**§ 36-98.1. State buildings; exception for certain assets owned by the Department of Transportation.**

A. The Building Code shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It shall provide for the inspection of state-owned buildings and enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall

provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.

B. Notwithstanding the provisions of subsection A and § 27-99, roadway tunnels and bridges owned by the Department of Transportation shall be exempt from the Building Code and the Statewide Fire Prevention Code Act (§ 27-94 et seq.). The Department of General Services shall not have jurisdiction over such roadway tunnels, bridges, and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to the Building Code.

Roadway tunnels and bridges shall be designed, constructed, and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Department of Transportation in consultation with the State Fire Marshal and approved by the Commonwealth Transportation Board. Emergency response planning and activities related to the standards approved by the Commonwealth Transportation Board shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency services providers. On an annual basis the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

C. Except as provided in subsection D of § 23-38.109, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.

#### **§ 36-98.2. Appeals from decision of Building Official regarding state-owned buildings.**

Appeals by the involved state agency from the decision of the Building Official for state-owned buildings shall be made directly to the State Building Code Technical Review Board.

#### **§ 36-98.3. Amusement devices.**

A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. Amusement device means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:

1. The issuance of certificates of inspection prior to the operation of an amusement device;
2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;
3. Maintenance inspections of existing amusement devices;
4. Reporting of accidents resulting in serious injury or death;
5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;
6. Certification of amusement device inspectors;
7. Qualifications of amusement device operators;
8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and
9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.

B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.

C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 6 of § 36-137 as competent to inspect amusement devices. The provisions of § 36-105 notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.

E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices.

#### **§ 36-99. Provisions of Code; modifications.**

A. The Building Code shall prescribe building regulations to be complied with in the construction and rehabilitation of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to ensure that such buildings and structures are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations, including procedures to be used by the local building department in the evaluation and granting of modifications for any provision of the Building Code, provided the spirit and functional intent of the Building Code are observed and public health, welfare and safety are assured. The provisions of the Building Code and modifications thereof shall be such as to protect the health, safety and welfare of the residents of the Commonwealth, provided that buildings and structures should be permitted to be constructed, rehabilitated and maintained at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation, including provisions necessary to prevent overcrowding, rodent or insect infestation, and garbage accumulation; and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

B. In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the International Code Council and the National Fire Protection Association. Notwithstanding the provisions of this section, farm buildings and structures shall be exempt from the provisions of the Building Code, except for a building or a portion of a building located on a farm that is operated as a restaurant as defined in § 35.1-1 and licensed as such by the Board of Health pursuant to Chapter 2 (§ 35.1-11 et seq.) of Title 35.1. However, farm buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to flood-proofing regulations or mudslide regulations, as applicable.

C. Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the local building department, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified.

D. The Board, upon a finding that sufficient allegations exist regarding failures noted in several localities of performance standards by either building materials, methods, or design, may conduct hearings on such allegations if it determines that such alleged failures, if proven, would have an adverse impact on the health, safety, or welfare of the citizens of the Commonwealth. After at least 21 days' written notice, the Board shall convene a hearing to consider such allegations. Such notice shall be given to the known manufacturers of the subject building material and as many other interested parties, industry representatives, and trade groups as can reasonably be identified. Following the hearing, the Board, upon finding that (i) the current technical or administrative Code provisions allow use of or result in defective or deficient building materials, methods, or designs, and (ii) immediate action is necessary to protect the health, safety, and welfare of the citizens of the Commonwealth, may issue amended regulations establishing interim performance standards and Code provisions for the installation, application, and use of such building materials, methods or designs in the Commonwealth. Such amended regulations shall become effective upon their publication in the Virginia Register of Regulations. Any amendments to regulations adopted pursuant to this subsection shall become effective upon their publication in the Virginia Register of Regulations and shall be effective for a period of 24 months or until adopted, modified, or repealed by the Board.



**§ 36-99.01. Provisions related to rehabilitation of existing buildings.**

A. The General Assembly hereby declares that (i) there is an urgent need to improve the housing conditions of low and moderate income individuals and families, many of whom live in substandard housing, particularly in the older cities of the Commonwealth; (ii) there are large numbers of older residential buildings in the Commonwealth, both occupied and vacant, which are in urgent need of rehabilitation and which must be rehabilitated if the State's citizens are to be housed in decent, sound, and sanitary conditions; and (iii) the application of those building code requirements currently in force to housing rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

B. The General Assembly further declares that (i) there is an urgent need to improve the existing condition of many of the Commonwealth's stock of commercial properties, particularly in older cities; (ii) there are large numbers of older commercial buildings in the Commonwealth, both occupied and vacant, that are in urgent need of rehabilitation and that must be rehabilitated if the citizens of the Commonwealth are to be provided with decent, sound and sanitary work spaces; and (iii) the application of the existing building code to such rehabilitation has sometimes led to the imposition of costly and time-consuming requirements that result in a significant reduction in the amount of rehabilitation activity taking place.

C. The Board is hereby directed and empowered to make such changes as are necessary to fulfill the intent of the General Assembly as expressed in subsections A and B, including, but not limited to amendments to the Building Code and adequate training of building officials, enforcement personnel, contractors, and design professionals throughout the Commonwealth.

**§ 36-99.2. Standards for replacement glass.**

Any replacement glass installed in buildings constructed prior to the effective date of the Uniform Statewide Building Code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation.

**§ 36-99.3. Smoke detectors and automatic sprinkler systems in colleges and universities.**

A. College or university buildings containing dormitories for sleeping purposes shall be provided with battery or AC powered smoke detector devices installed therein in accordance with the Uniform Statewide Building Code. All public or private college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

B. The Board of Housing and Community Development shall promulgate regulations pursuant to item (ii) of subdivision C5 of section 2.2-4006 establishing standards for automatic sprinkler systems throughout all public or private college or university buildings which are (i) more than seventy-five feet or more than six stories high and (ii) used, in whole or in part, as dormitories to house students. Such buildings shall be equipped with automatic sprinkler systems by September 1, 1999, regardless of when such buildings were constructed.

C. The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this section from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Department of General Services.

D. The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled twenty-four hours a day by military guards.

**§ 36-99.4. Smoke detectors in certain juvenile care facilities.**

Battery or AC-powered smoke detector devices shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children or juveniles which are operated by or under the auspices of the Department of Juvenile Justice, regardless of when the building was constructed, in accordance with the provision of the Uniform Statewide Building Code by July 1, 1986. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices.

**§ 36-99.5. Smoke detectors for the deaf and hearing-impaired.**

Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;
2. All multiple-family dwellings having more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify. New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein.

**§ 36-99.5:1. Smoke detectors and other fire detection and suppression systems in assisted living facilities, adult day care centers and nursing homes and facilities.**

A. Battery- or AC-powered smoke detector devices shall be installed in all assisted living facilities and adult day care centers licensed by the Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the Uniform Statewide Building Code.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the facility or center is located, or in the case of state-owned buildings, from the Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

B. The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for requiring (i) smoke detectors and (ii) such other fire detection and suppression systems as deemed necessary by the Board to increase the safety of persons in assisted living facilities, residential dwelling units designed or developed and marketed to senior citizens, nursing homes and nursing facilities. All nursing homes and nursing facilities which are already equipped with sprinkler systems shall comply with regulations relating to smoke detectors.

**§ 36-99.6. Underground and aboveground storage tank inspections.**

A. The Board of Housing and Community Development shall incorporate, as part of the Building Code, regulations adopted and promulgated by the State Water Control Board governing the installation, repair, upgrade and closure of underground and aboveground storage tanks.

B. Inspections undertaken pursuant to such Building Code regulations shall be done by employees of the local building department or another individual authorized by the local building department.

**§ 36-99.6:2. Installation of in-building emergency communication equipment for emergency public safety personnel.**

The Board of Housing and Community Development shall promulgate regulations as part of the Building Code requiring such new commercial, industrial, and multifamily buildings as determined by the Board be (i) designed and constructed so that emergency public safety personnel may send and receive emergency communications from within

those structures or (ii) equipped with emergency communications equipment so that emergency public safety personnel may send and receive emergency communications from within those structures.

For the purposes of this section:

"Emergency communications equipment" includes, but is not limited to, two-way radio communications, signal boosters, bi-directional amplifiers, radiating cable systems or internal multiple antenna, or any combination of the foregoing.

"Emergency public safety personnel" includes firefighters, emergency medical services personnel, law-enforcement officers, and other emergency public safety personnel routinely called upon to provide emergency assistance to members of the public in a wide variety of emergency situations, including, but not limited to, fires, medical emergencies, violent crimes, and terrorist attacks.

### **§ 36-99.6:3. Regulation of HVAC facilities.**

The Board shall promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) establishing standards for heating, ventilation, and air conditioning (HVAC) facilities in new, privately owned residential dwellings.

### **§ 36-99.7. Asbestos inspection in buildings to be renovated or demolished; exceptions.**

A. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1985, to be renovated or demolished until the local building department receives certification from the owner or his agent that the affected portions of the building have been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503 and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.1101). Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.

B. To meet the inspection requirements of subsection A except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by a statement that the materials to be repaired or replaced are assumed to contain friable asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor.

C. The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units, unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than thirty-five cubic feet off facility components where the length or area could not be measured previously.

D. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

### **§ 36-99.8. Skirting.**

Manufactured homes installed or relocated pursuant to the Building Code shall have skirting installed within sixty days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of eighteen inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special

tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the Building Code.

As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade.

**§ 36-99.9. Standards for fire suppression systems in certain facilities.**

The Board of Housing and Community Development shall promulgate regulations by October 1, 1990, in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2, establishing standards for fire suppression systems in nursing facilities and nursing homes, regardless of when such facilities or institutions were constructed. In the development of these standards, the Board shall seek input from relevant state agencies.

Units consisting of certified long-term care beds described in this section and § 32.1-126.2 located on the ground floor of general hospitals shall be exempt from the requirements of this section.

**§ 36-99.9:1. Standards for fire suppression systems in hospitals.**

The Board of Housing and Community Development shall promulgate regulations, to be effective by October 1, 1995, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), establishing standards for automatic sprinkler systems in hospitals, regardless of when such facilities were constructed. In the development of these standards, the Board shall seek input from relevant state and local agencies as well as affected institutions.

For the purposes of this section and § 32.1-126.3, "automatic sprinkler system" means a device for suppressing fire in patient rooms and other areas of the hospital customarily used for patient care.

**§ 36-99.10:1. Standards for installation of acoustical treatment measures in certain buildings and structures.**

The Board of Housing and Community Development shall promulgate regulations by October 1, 1994, for installation of acoustical treatment measures for construction in areas affected by above average noise levels from aircraft due to their proximity to flight operations at nearby airports. Such regulations shall provide for implementation at the option of a local governing body pursuant to the provisions of § 15.2-2295.

**§ 36-99.11. Identification of disabled parking spaces by above grade signage.**

A. All parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section.

B. All above grade disabled parking space signs shall have the bottom edge of the sign no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of the Uniform Statewide Building Code.

C. Building owners shall install above grade signs identifying all parking spaces reserved for the use of persons with disabilities in accordance with this section and the applicable provisions of the Uniform Statewide Building Code by January 1, 1993.

D. Effective July 1, 1998, all disabled parking signs shall include the following language: PENALTY, \$100-500 Fine, TOW-AWAY ZONE. Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than four feet above the parking surface.

**§ 36-100. Notice and hearings on adoption of Code, amendments and repeals.**

The Board shall adopt, amend, or repeal any Code provisions in accordance with the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. Before any such action, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the building official or, where

none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views.

**§ 36-101. Effective date of Code; when local codes may remain in effect.**

No Code provisions shall be made effective prior to January 1, 1973, or later than September 1, 1973; provided that the initial Building Code shall not become effective earlier than 180 days after the publication thereof.

It is further provided that where, in the opinion of the Review Board, local codes are in substantial conformity with the State Code the local code may, with the concurrence of the Review Board remain in effect for two years from the effective day of the State Code for transition to implementation of the State Code.

**§ 36-102. Modification, amendment or repeal of Code provisions.**

The Board may modify, amend or repeal any Code provisions from time to time as the public interest requires, after notice and hearing as provided in § 36-100 of this chapter. No such modification or amendment shall be made effective earlier than thirty days from the adoption thereof.

**§ 36-103. Buildings, etc., existing or projected before effective date of Code.**

Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost to ensure the protection of the public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code.

**§ 36-104. Code to be printed and furnished on request; true copy.**

The Department shall have printed from time to time and keep available in pamphlet form all Code provisions. Such pamphlets shall be furnished upon request to members of the public. A true copy of all such provisions adopted and in force shall be kept in the office of the Department, accessible to the public. The Department may charge a reasonable fee for distribution of the Building Code based on production and distribution costs.

**§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings; inspection warrants; inspection of elevators.**

A. Enforcement generally. Enforcement of the provisions of the Building Code for construction and rehabilitation shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the Building Code shall first lie to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code; however, where the town does not elect to administer and enforce the Building Code, the county in which the town is situated shall administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

B. New construction. Any building or structure may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$2,500, however, the inspection may, in the discretion of the inspecting authority, be waived. The building official shall coordinate all reports of inspections for compliance with the Building Code, with inspections of fire and health officials delegated such authority, prior to issuance of an occupancy permit.

C. Existing buildings and structures.

1. Inspections and enforcement of the Building Code. The local governing body may also inspect and enforce the provisions of the Building Code for existing buildings and structures, whether occupied or not. Such inspection and enforcement shall be carried out by an agency or department designated by the local governing body.

2. Complaints by tenants. However, upon a finding by the local building department, following a complaint by a tenant of a residential dwelling unit that is the subject of such complaint, that there may be a violation of the unsafe structures provisions of the Building Code, the local building department shall enforce such provisions.

3. Inspection warrants. If the local building department receives a complaint that a violation of the Building Code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building official or his agent to have access to the subject dwelling, the local building official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building official or his agent an inspection warrant to enable the building official or his agent to enter the subject dwelling for the purpose of determining whether violations of the Building Code exist. The local building official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

D. Elevator inspections. The local governing body shall, however, inspect and enforce the Building Code for elevators, except for elevators in single- and two-family homes and townhouses. Such inspection shall be carried out by an agency or department designated by the local governing body.

#### **§ 36-105.01. Elevator inspections by contract.**

The inspection of elevators in existing buildings and the enforcement of the Building Code for elevators shall be in compliance with the regulations adopted by the Board. The building department may also provide for such inspection by an approved agency or through agreement with other local certified elevator inspectors. An approved agency includes any individual, partnership or corporation who has met the certification requirements established by the Board. The Board shall establish such qualifications and procedures as it deems necessary to certify an approved agency. Such qualifications and procedures shall be based upon nationally accepted standards.

#### **§ 36-105.1. Inspection and review of plans of buildings under construction.**

Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the State Fire Marshal pursuant to the Statewide Fire Prevention Code in those localities which do not enforce the Statewide Fire Prevention Code (§ 27-94 et seq.).

#### **§ 36-105.1:1. Rental inspections; rental inspection districts; exemptions; penalties.**

A. For purposes of this section:

"Dwelling unit" means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household.

"Owner" means the person shown on the current real estate assessment books or current real estate assessment records.

"Residential rental dwelling unit" means a dwelling unit that is leased or rented to one or more tenants. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom, unless otherwise provided in the zoning ordinance by the local governing body.

B. Localities may inspect residential rental dwelling units. The local governing body may adopt an ordinance to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens, in accordance with the following:

1. Except as provided in subdivision B 3, the dwelling units shall be located in a rental inspection district established by the local governing body in accordance with this section, and
2. The rental inspection district is based upon a finding by the local governing body that (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district; (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in the need of inspection by the building department to prevent deterioration, taking into account the number, age and condition of residential dwelling rental units inside the proposed rental inspection district; and (iii) the inspection of residential rental dwelling units inside the proposed rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the proposed rental inspection district. Nothing in this section shall be construed to authorize a locality-wide rental inspection district and a local governing body shall limit the boundaries of the proposed rental inspection district to such areas of the locality that meet the criteria set out in this subsection, or
3. An individual residential rental dwelling unit outside of a designated rental inspection district is made subject to the rental inspection ordinance based upon a separate finding for each individual dwelling unit by the local governing body that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the Building Code that affect the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

For purposes of this section, the local governing body may designate a local government agency other than the building department to perform all or part of the duties contained in the enforcement authority granted to the building department by this section.

C. 1. Notification to owners of dwelling units. Before adopting a rental inspection ordinance and establishing a rental inspection district or an amendment to either, the governing body of the locality shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the locality.

Upon adoption by the local governing body of a rental inspection ordinance, the building department shall make reasonable efforts to notify owners of residential rental dwelling units in the designated rental inspection district, or their designated managing agents, and to any individual dwelling units subject to the rental inspection ordinance, not located in a rental inspection district, of the adoption of such ordinance, and provide information and an explanation of the rental inspection ordinance and the responsibilities of the owner thereunder.

2. Notification by owners of dwelling units to locality. The rental inspection ordinance may include a provision that requires the owners of dwelling units in a rental inspection district to notify the building department in writing if the dwelling unit of the owner is used for residential rental purposes. The building department may develop a form for such purposes. The rental inspection ordinance shall not include a registration requirement or a fee of any kind associated with the written notification pursuant to this subdivision. A rental inspection ordinance may not require that the written notification from the owner of a dwelling unit subject to a rental inspection ordinance be provided to the building department in less than 60 days after the adoption of a rental inspection ordinance. However, there shall be no penalty for the failure of an owner of a residential rental dwelling unit to comply with the provisions of this subsection, unless and until the building department provides personal or written notice to the property owner, as provided in this section. In any event, the sole penalty for the willful failure of an owner of a dwelling unit who is using the dwelling unit for residential rental purposes to comply with the written notification requirement shall be a civil penalty of up to \$50. For purposes of this subsection, notice sent by regular first class mail to the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed compliance with this requirement.

D. Initial inspection of dwelling units when rental inspection district is established. Upon establishment of a rental inspection district in accordance with this section, the building department may, in conjunction with the written notifications as provided for in subsection C, proceed to inspect dwelling units in the designated rental inspection district to determine if the dwelling units are being used as a residential rental property and for compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such property.

E. Provisions for initial and periodic inspections of multifamily dwelling units. If a multifamily development has more than 10 dwelling units, in the initial and periodic inspections, the building department shall inspect only a sampling of dwelling units, of not less than two and not more than 10 percent of the dwelling units, of a multifamily development, which includes all of the multifamily buildings which are part of that multifamily development. In no event, however, shall the building department charge a fee authorized by this section for inspection of more than 10 dwelling units. If the building department determines upon inspection of the sampling of dwelling units that there are violations of the

Building Code that affect the safe, decent and sanitary living conditions for the tenants of such multifamily development, the building department may inspect as many dwelling units as necessary to enforce the Building Code, in which case, the fee shall be based upon a charge per dwelling unit inspected, as otherwise provided in subsection H.

F. 1. Follow-up inspections. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department has the authority under the Building Code to require the owner of the dwelling unit to submit to such follow-up inspections of the dwelling unit as the building department deems necessary, until such time as the dwelling unit is brought into compliance with the provisions of the Building Code that affect the safe, decent and sanitary living conditions for the tenants.

2. Periodic inspections. Except as provided in subdivision F 1, following the initial inspection of a residential rental dwelling unit subject to a rental inspection ordinance, the building department may inspect any residential rental dwelling unit in a rental inspection district, that is not otherwise exempted in accordance with this section, no more than once each calendar year.

G. Exemptions from rental inspection ordinance. Upon the initial or periodic inspection of a residential rental dwelling unit subject to a rental inspection ordinance for compliance with the Building Code, provided that there are no violations of the Building Code that affect the safe, decent and sanitary living conditions for the tenants of such residential rental dwelling unit, the building department shall provide, to the owner of such residential rental dwelling unit, an exemption from the rental inspection ordinance for a minimum of four years. Upon the sale of a residential rental dwelling unit, the building department may perform a periodic inspection as provided in subdivision F 2, subsequent to such sale. If a residential rental dwelling unit has been issued a certificate of occupancy within the last four years, an exemption shall be granted for a minimum period of four years from the date of the issuance of the certificate of occupancy by the building department. If the residential rental dwelling unit becomes in violation of the Building Code during the exemption period, the building department may revoke the exemption previously granted under this section.

H. A local governing body may establish a fee schedule for enforcement of the Building Code, which includes a per dwelling unit fee for the initial inspections, follow-up inspections and periodic inspections under this section.

I. The provisions of this section shall not, in any way, alter the rights and obligations of landlords and tenants pursuant to the applicable provisions of Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55.

J. The provisions of this section shall not alter the duties or responsibilities of the local building department under § 36-105 to enforce the Building Code.

K. Unless otherwise provided in this section, penalties for violation of this section shall be the same as the penalties provided in the Building Code.

### **§ 36-105.3. Security of certain records.**

Building Code officials shall institute procedures to ensure the safe storage and secure handling by local officials having access to or in the possession of engineering and construction drawings and plans containing critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.).

### **§ 36-106. Violation a misdemeanor; civil penalty.**

A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five years after a first offense under this chapter shall be punished by a fine of not less than \$1,000 nor more than \$2,500. Any person convicted of a second offense committed within a period of five to ten years of a first offense under this chapter shall be punished by a fine of not less than \$500 nor more than \$2,500. Any person convicted of a third or subsequent offense involving the same property committed within ten years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than ten days and a fine of not less than \$2,500 nor



more than \$5,000, either or both. No portion of the fine imposed for such third or subsequent offense committed within ten years of an offense under this chapter shall be suspended.

B. Any locality may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated or remedied promptly after receipt of notice of violation from the local enforcement officer.

This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than \$100 for the initial summons and not more than \$150 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$3,000. Designation of a particular Code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the locality prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator shall agree in writing to abate or remedy the violation within six months after the date of payment of the civil penalty.

If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the locality to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate or remedy the violation in order to comply with the Code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of the assessment of the civil penalty.

C. Any owner or any other person, firm or corporation violating any Code provisions relating to the removal or the covering of lead-base paint which poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than \$2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be abated, each day the hazard remains unabated after the time set for the abatement has expired shall constitute a separate violation of the Uniform Statewide Building Code. Upon a reasonable showing to the court by a landlord as defined in § 55-248.4, that such landlord is financially unable to abate the lead-base paint hazard, the court shall order any rental agreement related to the affected premises terminated effective thirty days from the entry of the court order. For the purposes of the preceding sentence, termination of the rental agreement shall not be deemed noncompliance by the landlord pursuant to § 55-248.21.

D. Any prosecution under this section shall be commenced within two years as provided in § 19.2-8.

### **§ 36-107. Employment of personnel for administration of chapter.**

Subject to the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, the Director may employ such permanent and temporary clerical, technical and other assistants as are necessary or advisable for the proper administration of the provision of this chapter.

#### **§ 36-107.1. Sale of residential structure with lead-based paint levels exceeding Code standards; penalty.**

Whenever any property owner has been notified by local building officials or representatives of local health departments that any residential premise has levels of lead-based paint in violation of this chapter, such property owner shall notify prospective purchasers in writing of the presence of unacceptable levels of lead-based paint in such premises and the requirements concerning the removal of the same. Such notification shall include a copy of any notice

the property owner received from local building officials or representatives of local health departments advising of the presence of unacceptable levels of lead-based paint in such premises.

The notice required herein shall be provided to prospective purchasers prior to the signing of a purchase or sales agreement or, if there is no purchase or sales agreement, prior to the signing of a deed. The requirements shall not apply to purchase and sales agreements or deeds signed prior to July 1, 1991. Transactions in which sellers have accepted written offers prior to July 1, 1991, but have not signed a purchase or sales agreement or a deed prior to July 1, 1991, shall be subject to the notice requirements.

Any person who fails to comply with the provisions of this section shall be liable for all damages caused by his failure to comply and shall, in addition, be liable for a civil penalty not to exceed \$1,000.

**§ 36-108. Board continued; members.**

There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of 14 members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder, selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor, selected from a slate presented by the Virginia Branch, Associated General Contractors of America; two members who have had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building Officials Conference; one member who is employed by a public agency as a fire prevention officer, selected from a slate presented by the Virginia Fire Chiefs Association; one member whose primary occupation is commercial or retail construction or operation and maintenance, selected from a slate presented by the Virginia chapters of Building Owners and Managers Association, International; one member whose primary occupation is residential, multifamily housing construction or operation and maintenance, selected from a slate presented by the Virginia chapters of the National Apartment Association; one member who is an electrical contractor who has held a Class A license for at least 10 years; one member who is a plumbing contractor who has held a Class A license for at least 10 years and one member who is a heating and cooling contractor who has held a Class A license for at least 10 years, both of whom are selected from a combined slate presented by the Virginia Association of Plumbing-Heating-Cooling Contractors and the Virginia Chapters of the Air Conditioning Contractors of America; and two members from the Commonwealth at large who may be members of local governing bodies. The members shall serve at the pleasure of the Governor.

**§ 36-109. Officers; secretary.**

The Review Board, under rules adopted by itself, shall elect one of its members as chairman, for a term of two years, and may elect one of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember.

**§ 36-111. Oath and bonds.**

Before entering upon the discharge of his duties, each member of the Review Board shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein; and shall give bond with corporate surety in such penalty as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premiums on such bonds shall be paid for as other expenses of the Department are paid.

**§ 36-112. Meetings.**

The Review Board shall meet at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under the provisions of this chapter.

**§ 36-113. Offices.**

The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, and such Board's main office shall be therein.

**§ 36-114. Board to hear appeals.**

The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the amusement device regulations, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), the Industrialized Building Safety Law (§ 36-70 et seq.), the Virginia Manufactured Housing Construction and Safety Standards Law (§ 36-85.2 et seq.), and the Virginia Certification Standards adopted by the Board of Housing and Community Development, and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that an informal conference pursuant to § 2.2-4019 shall not be required.

**§ 36-115. Subpoenas; witnesses; designation of subordinates.**

In any matter before it on appeal for hearing and determination, the Review Board, or its designated subordinates, may compel the attendance of all needed witnesses in like manner as a circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate of the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 2.2-4020.

**§ 36-117. Record of decisions.**

A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Board. Such record shall be open to public inspection at all times during business hours.

**§ 36-118. Interpretation of Code; recommendation of modifications.**

The Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours.

**§ 36-119. Rules and regulations under § 36-73 not superseded.**

This chapter shall not amend, supersede, or repeal the rules and regulations prescribing standards to be complied with, in industrialized building units and mobile homes promulgated under § 36-73.

**§ 36-119.1. Existing buildings.**

This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, rehabilitation, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the construction and rehabilitation provisions of the Building Code.

**§ 36-131. Definitions.**

As used in this chapter, the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

"Board" means the Board of Housing and Community Development.

"Consolidated Plan" means a document setting forth various housing and community development goals, objectives, and strategies to be followed by the Commonwealth in addressing housing and community development conditions in the Commonwealth and serving as the strategic plan for the programs established by the Department and, to the extent and in the manner determined in accordance with § 36-55.27:1, for the programs established by the Virginia Housing Development Authority. The Consolidated Plan will identify housing and community development needs in the Commonwealth; the level of investment and charges to state housing programs and community development necessary

to address the need; the availability of state, local, federal, and nongovernmental sources of funds; and the appropriate mix of loans, grants, and other alternative funding methods for implementing the strategy.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

#### **§ 36-132. Creation of Department; appointment of Director.**

There is hereby created in the executive department the Department of Housing and Community Development. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with his own.

#### **§ 36-132.1. Commission on Local Government.**

The Department shall include the Commission on Local Government, which shall exercise the powers and duties described in §§ 15.2-1301, 15.2-2303.2, and Chapters 29 (§ 15.2-2900 et seq.), 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 34 (§ 15.2-3400 et seq.), 35 (§ 15.2-3500 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), 40 (§ 15.2-4000 et seq.), and 41 (§ 15.2-4100 et seq.) of Title 15.2 and §§ 30-19.03 through 30-19.03:1.1.

#### **§ 36-133. Director to supervise Department.**

The Director of the Department of Housing and Community Development shall, under the direction and control of the Governor be responsible for the supervision of the Department and shall exercise such other powers and perform such other duties as may be required of him by the Governor.

#### **§ 36-134. General powers of Director.**

The Director shall have the following general powers:

- A. To employ such personnel as may be required to carry out the purposes of this chapter.
- B. To make and enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of this Commonwealth.
- C. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable.
- D. To do all acts necessary or convenient to carry out the purposes of this chapter.

#### **§ 36-135. Board of Housing and Community Development; members; terms; chairman; appointment of ad hoc committee.**

A. The Board of Housing and Community Development within the Department of Housing and Community Development shall consist of 14 members as follows: 11 members, one representing each congressional district in the Commonwealth, who are appointed by the Governor, subject to confirmation by the General Assembly, the Executive Director of the Virginia Housing Development Authority as an ex officio voting member; a member of the Virginia Fire Services Board, to be appointed by the chairman of that Board; and the Director of Regulatory Compliance of the Virginia Building Officials Association, who shall be a member of the Board's Codes and Standards Committee, but shall not serve as either the chairman of such committee or of the Board. Members shall serve for four-year terms and no member shall serve for more than two full successive terms, except for the Director of Regulatory Compliance of the Virginia Building Officials Association, who shall serve no more than one four-year term. A chairman of the Board shall be elected annually by the Board.

B. Whenever the Board of Housing and Community Development proposes a change to statewide building and fire regulations, the Board may convene an ad hoc committee, including but not limited to representatives of those industry groups directly affected by such change, to advise the Board on such matters.

#### **§ 36-136. Meetings of Board.**

The Board shall meet at least once every three months, and on the call of the chairman, when, in his opinion, additional meetings are necessary.

**§ 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory Committee.**

The Board shall exercise the following powers and duties, and such others as may be provided by law:

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to housing and community development.
5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.
6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of this title, Chapter 9 (§ 27-94 et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.
7. Levy by regulation up to two percent of building permit fees authorized pursuant to § 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities that maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for the continued operation of the Building Code Academy.

The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised of representatives of code enforcement personnel and construction industry professions affected by the provisions of the building and fire prevention regulations promulgated by the Board. Members of the Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The Committee shall advise the Board and the Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.

8. Establish general policies, procedures, and programs for the Virginia Housing Partnership Revolving Fund established in Chapter 9 (§ 36-141 et seq.) of this title.
9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Partnership Revolving Fund and designate the proportion of such grants or loans to be made available in each category.
10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Housing Partnership Revolving Fund.
11. Advise the Virginia Housing Development Authority on matters relating to the administration and management of loans and grants from the Virginia Housing Partnership Revolving Fund.
12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.
13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.
14. Advise the Department in the development of the Consolidated Plan Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.
15. Advise the Governor and the Department on the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

**§ 36-139. Powers and duties of Director.**

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.
2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.
4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.
5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.
6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.
7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.
8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.
9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.
10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.
11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).
12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).
13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).
14. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.
15. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.
16. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.
17. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.
18. Advising the Board on matters relating to policies and programs of the Virginia Housing Partnership Revolving Fund.
19. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Partnership Revolving Fund and to carry out the policies and procedures established by the Board.
20. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing Development Authority as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.
21. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in § 36-55.63.
22. Establishing and administering program guidelines for a statewide homeless intervention program.
23. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.
24. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.
25. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-2901 and perform all other duties of that position as prescribed by law.
26. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

**§ 36-139.1. Sale of real property for housing demonstration projects.**

The Director is authorized to sell surplus real property belonging to the Commonwealth which is placed under the control of the Department for the purpose of establishing owner-occupied residential housing demonstration projects, with the prior written approval of the Governor or his designee, who shall first consider the written recommendation of the Director of the Department of General Services. The methods, terms and conditions of sale shall be developed in cooperation with the Department of General Services. Any contract of sale or deed of conveyance shall be approved as to form by the Attorney General or one of his deputies or assistant attorneys general. The proceeds from all such sales shall be handled in the manner prescribed in subsection D of § 2.2-1156.

**§ 36-139.2. Appointment of State Fire Marshal; qualifications; powers and duties; power to arrest, to procure and serve warrants and to issue summonses; limitation on authority.**

The Director shall appoint a State Fire Marshal and other personnel necessary to carry out the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.). The State Fire Marshal and other personnel appointed pursuant to this section shall be selected upon the basis of education or experience in administering laws and regulations designed to prevent and eliminate hazards to life and property arising from fire.

The State Fire Marshal shall have the powers and duties prescribed by the Statewide Fire Prevention Code (§ 27-94 et seq.), by § 27-61, by Board regulation and by the Director. The State Fire Marshal and those persons duly authorized to enforce the Statewide Fire Prevention Code shall have the authority to arrest, to procure and serve warrants of arrests and to issue summonses in the manner authorized by general law for violation of the Statewide Fire Prevention Code. The authority granted in this section shall not be construed to authorize the State Fire Marshal to wear or carry firearms. All personnel appointed pursuant to this section shall meet the training requirements set forth for local fire marshals in § 27-34.2.

**§ 36-139.3. Inspection of certain state-owned, state-operated or state-licensed facilities; enforcement of safety standards.**

Notwithstanding any other provisions of this chapter, the State Fire Marshal, upon presenting appropriate credentials, shall make annual inspections for hazards incident to fire in all (i) residential care facilities operated by any state agency, (ii) assisted living facilities licensed or subject to licensure pursuant to Chapter 18 (§ 63.2-1800 et seq.) of Title 63.2 which are not inspected by a local fire marshal, (iii) student-residence facilities owned or operated by the public institutions of higher education in the Commonwealth, and (iv) public schools in the Commonwealth which are not inspected by a local fire marshal. In the event that any such facility or residence is found to be nonconforming to the Statewide Fire Prevention Code (§ 27-94 et seq.), the State Fire Marshal or local fire marshal may petition any court of competent jurisdiction for the issuance of an injunction.

**§ 36-139.4. Agreements between Department and other agencies.**

The Department is hereby authorized to enter into agreements with federal agencies, other state agencies and political subdivisions for services directly related to enforcement and administration of laws, rules, or regulations, or ordinances of such agencies affecting fire safety in public buildings.

**§ 36-139.5. Power to enter into agreements with owners of housing developments eligible for federal low-income housing credits.**

The Department may enter into agreements with the owners of housing developments which are or will be eligible for low-income housing credits under the United States Internal Revenue Code. Any such agreement shall contain covenants and restrictions as shall be required by the United States Internal Revenue Code and such other provisions as the Department shall deem necessary or appropriate. Any such agreement shall be enforceable in accordance with its terms in any court of competent jurisdiction in the Commonwealth by the Department or by such other persons as shall be specified in the United States Internal Revenue Code. Any such agreement, when duly recorded as a restrictive covenant among the land records of the jurisdiction or jurisdictions in which the development is located, shall run with the land and be binding on the successors and assigns of the owner. All references in this section to the United States Internal Revenue Code shall include any amendments thereto and any regulations promulgated thereunder, as the foregoing may be or become effective at any time.

#### **§ 36-139.5:1. Eligibility for Industrial Site Development Program.**

The Department, in determining eligibility for the Industrial Site Development Program, shall allow exceptions to the Department's minimum requirement of 200 net developable acres because of geographic topographic or land availability limitations.

#### **§ 36-139.6. Additional powers and duties of Director; oversight of planning district commissions.**

The Director of the Department of Housing and Community Development shall have the following powers and duties relating to oversight of planning district commissions:

1. To recommend to the Governor the level of state general appropriation funding for each planning district commission, taking into consideration the minimum funding level necessary for operation, the population of each district, and other factors considered appropriate;
2. To distribute state general appropriation funding to planning district commissions consistent with the provisions of this chapter and Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2;
3. To administer the Regional Cooperation Incentive Fund in accordance with § 15.2-4217;
4. To provide technical assistance to planning district commissions regarding regional approaches to area-wide problems. Assistance may be initiated by the Department, individual local governments, or planning district commissions;
5. To require the submission of annual programmatic and financial information by each planning district commission in a format prescribed by the Director;
6. To prepare a biennial report to the Governor and the General Assembly which identifies the activities and other information deemed appropriate by the Director concerning planning district commissions, including findings as to planning district commissions which are not complying with Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2. Copies of the biennial report shall also be sent to the Commission on Local Government, Department of Business Assistance, Department of Conservation and Recreation, Department of Environmental Quality, Department of Planning and Budget, Department of Transportation, Virginia Economic Development Partnership, and others upon request; and
7. To establish the Virginia Planning District Commission Council made up of the chairman or designated representative from each planning district commission to advise Department staff on programs, rules and regulations for the planning district commissions. Technical committees of planning district commission staff, state and local agency staff, and private sector individuals as needed, may be created.

#### **§ 36-139.7. Boundaries of planning districts.**

A. The Department shall review the boundaries of planning districts following every United States decennial census of population. The Department shall also review the boundaries upon the request of a member jurisdiction of a planning district. An initial review shall be conducted prior to July 1, 1996. Upon concluding such review, the Department shall, subject to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), make adjustments to the boundaries of planning districts as it deems advisable.

B. The Department shall consider the following criteria in making determinations as to the governmental subdivisions to be included in a planning district: recognition of communities of interest among the governmental subdivisions, recognition of common economic and market interests, the ease of communications and commissioner travel time, metropolitan statistical area boundaries designated by the federal government, a population base adequate to ensure financial viability, and geographic factors and natural boundaries. In making such determination, the Department shall also consider the wishes of a governmental subdivision within or surrounding a proposed planning district, as expressed by resolution of its governing body.

C. In conducting the boundaries review, the Department shall consult with the governing bodies of the governmental subdivisions within and adjoining a planning district which is proposed to be changed and shall hold such public and other hearing as it may deem advisable, provided at least one public hearing shall be held in each planning district which is proposed to be changed.

D. To the extent practical, upon completion of a statutory review of planning district boundaries, state agencies may provide for sorting local statistical data according to planning district geography for external use of information for state, regional and local strategic and economic development planning.



#### **§ 54.1-400. Definitions.**

As used in this chapter unless the context requires a different meaning:

"Architect" means a person who, by reason of his knowledge of the mathematical and physical sciences, and the principles of architecture and architectural design, acquired by professional education, practical experience, or both, is qualified to engage in the practice of architecture and whose competence has been attested by the Board through licensure as an architect.

The "practice of architecture" means any service wherein the principles and methods of architecture are applied, such as consultation, investigation, evaluation, planning and design, and includes the responsible administration of construction contracts, in connection with any private or public buildings, structures or projects, or the related equipment or accessories.

"Board" means the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

"Certified interior designer" means a design professional who meets the criteria of education, experience, and testing in the rendering of interior design services established by the Board through certification as an interior designer.

"Certified landscape architect" means a person who, by reason of his special knowledge of natural, physical and mathematical sciences, and the principles and methodology of landscape architecture and landscape architectural design acquired by professional education, practical experience, or both, is qualified to engage in the practice of landscape architecture and whose competence has been attested by the Board through certification as a landscape architect.

The "practice of landscape architecture" by a certified landscape architect means any service wherein the principles and methodology of landscape architecture are applied in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to projects principally directed at the functional and aesthetic use of land.

"Improvements to real property" means any valuable addition or amelioration made to land and generally whatever is erected on or affixed to land which is intended to enhance its value, beauty or utility, or adapt it to new or further purposes. Examples of improvements to real property include, but are not limited to, structures, buildings, machinery, equipment, electrical systems, mechanical systems, roads, and water and wastewater treatment and distribution systems.

"Interior design" by a certified interior designer means any service rendered wherein the principles and methodology of interior design are applied in connection with the identification, research, and creative solution of problems pertaining to the function and quality of the interior environment. Such services relative to interior spaces shall include the preparation of documents for nonload-bearing interior construction, furnishings, fixtures, and equipment in order to enhance and protect the health, safety, and welfare of the public.

"Land surveyor" means a person who, by reason of his knowledge of the several sciences and of the principles of land surveying, and of the planning and design of land developments acquired by practical experience and formal education, is qualified to engage in the practice of land surveying, and whose competence has been attested by the Board through licensure as a land surveyor.

The "practice of land surveying" includes surveying of areas for a determination or correction, a description, the establishment or reestablishment of internal and external land boundaries, or the determination of topography, contours or location of physical improvements, and also includes the planning of land and subdivisions thereof. The term "planning of land and subdivisions thereof" shall include, but not be limited to, the preparation of incidental plans and profiles for roads, streets and sidewalks, grading, drainage on the surface, culverts and erosion control measures, with reference to existing state or local standards.

"Professional engineer" means a person who is qualified to practice engineering by reason of his special knowledge and use of mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Board through licensure as a professional engineer.

The "practice of engineering" means any service wherein the principles and methods of engineering are applied to, but are not necessarily limited to, the following areas: consultation, investigation, evaluation, planning and design of public or private utilities, structures, machines, equipment, processes, transportation systems and work systems, including responsible administration of construction contracts. The term "practice of engineering" shall not include the service or maintenance of existing electrical or mechanical systems.

"Responsible charge" means the direct control and supervision of the practice of architecture, professional engineering, or land surveying.

**§ 54.1-402. Further exemptions from license requirements for architects, professional engineers, and land surveyors.**

A. No license as an architect or professional engineer shall be required pursuant to § 54.1-406 for persons who prepare plans, specifications, documents and designs for the following, provided any such plans, specifications, documents or designs bear the name and address of the author and his occupation:

1. Single- and two-family homes, townhouses and multifamily dwellings, excluding electrical and mechanical systems, not exceeding three stories; or
2. All farm structures used primarily in the production, handling or storage of agricultural products or implements, including, but not limited to, structures used for the handling, processing, housing or storage of crops, feeds, supplies, equipment, animals or poultry; or
3. Buildings and structures classified with respect to use as business (Use Group B) and mercantile (Use Group M), as provided in the Uniform Statewide Building Code and churches with an occupant load of 100 or less, excluding electrical and mechanical systems, where such building or structure does not exceed 5,000 square feet in total net floor area, or three stories; or
4. Buildings and structures classified with respect to use as factory and industrial (Use Group F) and storage (Use Group S) as provided in the Uniform Statewide Building Code, excluding electrical and mechanical systems, where such building or structure does not exceed 15,000 square feet in total net floor area, or three stories; or
5. Additions, remodeling or interior design without a change in occupancy or occupancy load and without modification to the structural system or a change in access or exit patterns or increase in fire hazard; or
6. Electric installations which comply with all applicable codes and which do not exceed 600 volts and 800 amps, where work is designed and performed under the direct supervision of a person licensed as a master's level electrician or Class A electrical contractor by written examination, and where such installation is not contained in any structure exceeding three stories or located in any of the following categories:
  - a. Use Group A-1 theaters which exceed assembly of 100 persons;
  - b. Use Group A-4 except churches;
  - c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
7. Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of catalogued standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300° F (150 degrees C) where such work is designed and performed under the direct supervision of a person licensed as a master's level plumber, master's level heating, air conditioning and ventilating worker, or Class A contractor in those specialties by written examination. In addition, such installation may not be contained in any structure exceeding three stories or located in any structure which is defined as to its use in any of the following categories:
  - a. Use Group A-1 theaters which exceed assembly of 100 persons;
  - b. Use Group A-4 except churches;
  - c. Use Group I, institutional buildings, except day care nurseries and clinics without life-support systems; or
8. The preparation of shop drawings, field drawings and specifications for components by a contractor who will supervise the installation and where the shop drawings and specifications (i) will be reviewed by the licensed professional engineer or architect responsible for the project or (ii) are otherwise exempted; or
9. Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and for conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia; or
10. Construction by a state agency or political subdivision not exceeding \$75,000 in value keyed to the January 1, 1991, Consumer Price Index (CPI) and not otherwise requiring a licensed architect, engineer, or land surveyor by an adopted code and maintenance by that state agency or political subdivision of water distribution, sewage collection, storm

drainage systems, sidewalks, streets, curbs, gutters, culverts, and other facilities normally and customarily constructed and maintained by the public works department of the state agency or political subdivision.

B. No person shall be exempt from licensure as an architect or engineer who engages in the preparation of plans, specifications, documents or designs for:

1. Any unique design of structural elements for floors, walls, roofs or foundations; or
2. Any building or structure classified with respect to its use as high hazard (Use Group H).

C. Persons utilizing photogrammetric methods or similar remote sensing technology shall not be required to be licensed as a land surveyor pursuant to subsection B of § 54.1-404 or 54.1-406 to: (i) determine topography or contours, or to depict physical improvements, provided such maps or other documents shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination, or (ii) graphically show existing property lines and boundaries on maps or other documents provided such depicted property lines and boundaries shall only be used for general information.

Any determination of topography or contours, or depiction of physical improvements, utilizing photogrammetric methods or similar remote sensing technology by persons not licensed as a land surveyor pursuant to § 54.1-406 shall not show any property monumentation or property metes and bounds, nor provide any measurement showing the relationship of any physical improvements to any property line or boundary.

Any person not licensed pursuant to subsection B of § 54.1-404 or 54.1-406 preparing documentation pursuant to subsection C of § 54.1-402 shall note the following on such documentation: "Any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination."

D. Terms used in this section, and not otherwise defined in this chapter, shall have the meanings provided in the Uniform Statewide Building Code in effect on July 1, 1982, including any subsequent amendments.

**§ 54.1-402.1. State and local government employees; license exemptions for persons employed prior to March 8, 1992.**

Any person engaged in the practice of engineering, architecture, or land surveying as those terms are defined in § 54.1-400 as a regular, full-time, salaried employee of the Commonwealth or any political subdivision of the Commonwealth on March 8, 1992, who remains employed by any state agency or political subdivision shall be exempt until June 30, 2010, from the licensure requirements of § 54.1-406 provided the employee does not furnish advisory service for compensation to the public or as an independent contracting party in this Commonwealth or any political subdivision thereof in connection with engineering, architectural, or land surveying matters. The chief administrative officer of any agency of the Commonwealth or political subdivision thereof employing persons engaged in the practice of engineering, architecture, or land surveying as regular, full-time, salaried employees shall have the authority and responsibility to determine the engineering, architecture, and land surveying positions which have responsible charge of engineering, architectural, or land surveying decisions.

**§ 54.1-410. Other building laws not affected; duties of public officials.**

A. Nothing contained in this chapter or in the regulations of the Board shall be construed to limit the authority of any public official authorized by law to approve plans, specifications or calculations in connection with improvements to real property. This shall include, but shall not be limited to, the authority of officials of local building departments as defined in § 36-97, to require pursuant to the Uniform Statewide Building Code, state statutes, local ordinances, or code requirements that such work be prepared by a person licensed or certified pursuant to this chapter.

B. Any public body authorized by law to require that plans, specifications or calculations be prepared in connection with improvements to real property shall establish a procedure to ensure that such plans, specifications or calculations be prepared by an architect, professional engineer, land surveyor or landscape architect licensed, certified or authorized pursuant to this chapter in any case in which the exemptions contained in §§ 54.1-401, 54.1-402 or § 54.1-402.1 are not applicable.

Drafting of permits, reviewing of plans or inspection of facilities for compliance with an adopted code or standard by any public body or its designated agent shall not require the services of an architect, professional engineer, land surveyor or landscape architect licensed or certified pursuant to this chapter.

**§ 55-70.1. Implied warranties on new homes.**

A. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.

B. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike manner, so as to pass without objection in the trade, and (iii) fit for habitation.

C. The above warranties implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures. A contract for sale may waive, modify or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify or exclude such warranties are conspicuous (as defined by subdivision (10) of § 8.1A-201), set forth on the face of such contract in capital letters which are at least two points larger than the other type in the contract and only if the words used to waive, modify or exclude the warranties state with specificity the warranty or warranties that are being waived, modified or excluded. If all warranties are waived or excluded, a contract must specifically set forth in capital letters which are at least two points larger than the other type in the contract that the dwelling is being sold "as is".

D. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages; provided, however, for any defect discovered after July 1, 2002, such vendee shall first provide the vendor, by registered or certified mail at his last known address, a written notice stating the nature of the warranty claim. After such notice, the vendor shall have a reasonable period of time, not to exceed six months, to cure the defect that is the subject of the warranty claim.

E. The warranty shall extend for a period of one year from the date of transfer of record title or the vendee's taking possession, whichever occurs first, except that the warranty pursuant to subdivision (i) of subsection B for the foundation of new dwellings shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. As used in this section, the term "new dwelling" shall mean a dwelling or house which has not previously been occupied for a period of more than 60 days by anyone other than the vendor or the vendee or which has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than 12 months excluding dwellings constructed solely for lease. The term "new dwelling" shall not include a condominium or condominium units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.

F. The term "structural defects," as used in this section, shall mean a defect or defects that reduce the stability or safety of the structure below accepted standards or that restrict the normal use thereof.

G. In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood the vendor shall be deemed to have assigned the manufacturer's warranty, at settlement, to the vendee. The vendee shall have a direct cause of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, said provision shall be unenforceable and of no effect.

**§ 63.2-1705. Compliance with Uniform Statewide Building Code.**

A. Buildings licensed as assisted living facilities, adult day care centers and child welfare agencies shall be classified by and meet the specifications for the proper Use Group as required by the Virginia Uniform Statewide Building Code.

B. Buildings used for assisted living facilities or adult day care centers shall be licensed for ambulatory or nonambulatory residents or participants. Ambulatory means the condition of a resident or participant who is physically and mentally capable of self-preservation by evacuating in response to an emergency to a refuge area as defined by the Uniform Statewide Building Code without the assistance of another person, or from the structure itself without the assistance of another person if there is no such refuge area within the structure, even if such resident or participant may require the assistance of a wheelchair, walker, cane, prosthetic device, or a single verbal command to evacuate. Nonambulatory means the condition of a resident or participant who by reason of physical or mental impairment is not capable of self-preservation without the assistance of another person.

## A/E SEAL ON DRAWINGS

The purpose of these charts and notes is for quick reference to determine in accordance with § 54.1 - 402 of the Code of Virginia if an architect's or engineer's (A/E) seal is required on documents for proposed construction.

### CHART A - GENERAL DESIGN

A proposed structure which is classified within any of the categories marked "Yes" requires an A/E seal on the documents. Separate requirements apply as to when the electrical, plumbing or mechanical systems in such structures require an A/E seal (see Charts B and C).

GROUP	BRIEF DESCRIPTION	AREA (SQ. FT.)			HEIGHT (STORIES)	
		5,000 OR LESS	5,001 TO 15,000	OVER 15,000	3 OR LESS	OVER 3
A <sup>1</sup>	ASSEMBLY	YES	YES	YES	YES	YES
B	BUSINESS	—	YES	YES	—	YES
E	SCHOOLS& DAY CARE CENTERS	YES	YES	YES	YES	YES
F	FACTORY & INDUSTRIAL	—	—	YES	—	YES
H	HIGH HAZARD	YES	YES	YES	YES	YES
I	INSTITUTIONAL	YES	YES	YES	YES	YES
M	MERCANTILE	—	YES	YES	—	YES
R-1	HOTEL, MOTEL & DORMITORY	YES	YES	YES	YES	YES
R-2 <sup>7</sup>	MULTI-FAMILY RESIDENTIAL	—	—	YES	YES	YES
R-3	2 FAMILY ATTACHED	—	—	YES	—	YES
R-4	RESIDENTIAL ASSISTED LIVING	—	—	YES	—	YES
R-5	1 & 2 FAMILY DWELLINGS	—	—	YES	—	YES
S	STORAGE (NON-FARM)	—	—	YES	—	YES
U	UTILITY & MISCELLANEOUS	—	—	YES	—	YES
ALL	INTERIOR DESIGN	SEE NOTE NUMBER 4				

Notes: (Apply the following notes to all categories as applicable.)

- Churches are exempt if building does not exceed 5,000 square feet or three stories, and the occupant load does not exceed 100.
- A local building code official may require an A/E seal even if not required to do so by this chart.
- The law requires that, where an A/E seal is not present, the plans must be signed by the individual (not company) responsible for the design, including the individual's occupation and address.
- Additions, remodeling or interior design defined under § 54.1-400 of the Code of Virginia might not require an A/E seal. For construction, additions or remodeling resulting in a change in occupancy, occupancy load, modification to the structural system, change in access or egress or an increase in fire hazard an A/E seal is required in accordance with § 54.1-400, although notes 1 and 2 still apply.
- Any unique design of structural elements for floors, walls, roofs or foundations requires an A/E seal, regardless of whether or not the remainder of the plans require such certification.
- Buildings, structures, or electrical and mechanical installations which are not otherwise exempted but which are of standard design, provided they bear the certification of a professional engineer or architect registered or licensed in another state, and provided that the design is adapted for the specific location and conformity with local codes, ordinances and regulations, and is so certified by a professional engineer or architect licensed in Virginia may not require an A/E seal.
- One exit and three stories or less Group R-2 buildings would normally be exempted from an A/E seal except where required by Note 2. Most all other three stories or less Group R-2 multi-family buildings are required by the building officials to have A/E seals for the construction documents.

## CHART B - ELECTRICAL DESIGN (cont.)

A proposed electrical system which is classified within any of the categories marked "Yes" requires an A/E seal on the construction documents. Those NOT marked "Yes" may not require an A/E seal only if designed by a licensed master electrician or Class A electrical contractor (see Notes 2 and 3). Separate requirements apply as to whether the mechanical systems or the general design of such structures require an A/E seal (see Charts A and C).

GROUP	BRIEF DESCRIPTION	HEIGHT (STORIES)		OCCUPANT LOAD		VOLTS		AMPS	
		3 OR LESS	OVER 3	100 OR LESS	OVER 100	600 OR LESS	OVER 600	800 OR LESS	OVER 800
A-1	THEATERS	–	YES	–	YES	–	YES	–	YES
A-2	RESTAURANTS, NIGHTCLUBS	–	YES	–	–	–	YES	–	YES
A-3	DANCE HALLS, CHURCHES	–	YES	–	–	–	YES	–	YES
A-5	GRANDSTANDS, ETC.	–	YES	–	–	–	YES	–	YES
B	BUSINESS	–	YES	–	–	–	YES	–	YES
E	SCHOOLS	YES	YES	YES	YES	YES	YES	YES	YES
F	FACTORY & INDUSTRIAL	–	YES	–	–	–	YES	–	YES
H	HIGH HAZARD	YES	YES	YES	YES	YES	YES	YES	YES
I	INSTITUTIONAL (I-1, I-2 & I-3)	YES	YES	YES	YES	YES	YES	YES	YES
I-4	DAY CARE/NURSERIES	–	YES	–	YES	–	YES	–	YES
M	MERCANTILE	–	YES	–	–	–	YES	–	YES
R	RESIDENTIAL	–	YES	–	YES	–	YES	–	YES
S	STORAGE	–	YES	–	–	–	YES	–	YES
U	UTILITY & MISCELLANEOUS	–	YES	–	–	–	YES	–	YES

Notes: (Apply the following notes to all categories as applicable.)

1. A local building official may require an A/E seal for electrical work even if not required to do so by this chart.
2. The law requires that, where an A/E seal is not present, the plans must be signed by the individual (not company) responsible for the design, including the individual's occupation and address.
3. The above chart applies both to new construction and to additions or remodeling.
4. The exemption for electrical contractors and electricians is applicable only when both design and installation are under their direction or control.

## CHART C - PLUMBING AND MECHANICAL DESIGN (cont.)

A proposed plumbing or mechanical system which is classified within any of the categories marked "Yes" requires an A/E seal on the construction documents. Those NOT marked "Yes" may not require an A/E seal only if designed by a person licensed as a master plumber, master mechanical worker, or Class A contractor in those specialties by written examination (see Notes 3 and 5). Separate requirements apply as to whether the electrical system or the general design of such structures requires an A/E seal (see Charts A and B).

GROUP	BRIEF DESCRIPTION	HEIGHT (STORIES)		OCCUPANT LOAD		THRESHOLD LEVEL <sup>1</sup>	
		3 OR LESS	OVER 3	100 OR LESS	OVER 100	BELOW	ABOVE
A-1	THEATERS	–	YES	–	YES	–	YES
A-2	RESTAURANTS, NIGHTCLUBS	–	YES	–	–	–	YES
A-3	DANCE HALLS, CHURCHES	–	YES	–	–	–	YES
A-5	GRANDSTANDS, ETC.	–	YES	–	–	–	YES
B	BUSINESS	–	YES	–	–	–	YES
E	SCHOOLS	YES	YES	YES	YES	YES	YES
F	FACTORY & INDUSTRIAL	–	YES	–	–	–	YES
H	HIGH HAZARD	YES	YES	YES	YES	YES	YES
I	INSTITUTIONAL (I-1, I-2 & I-3)	YES	YES	YES	YES	YES	YES
I-4	DAY CARE	–	YES	–	YES	–	YES
M	MERCANTILE	–	YES	–	–	–	YES
R	RESIDENTIAL	–	YES	–	YES	–	YES
S	STORAGE	–	YES	–	–	–	YES
U	UTILITY & MISCELLANEOUS	–	YES	–	–	–	YES

Notes: (Apply the following notes to all categories as applicable.)

1. The "Threshold Level" is defined in the law as "Plumbing and mechanical systems using packaged mechanical equipment, such as equipment of cataloged standard design which has been coordinated and tested by the manufacturer, which comply with all applicable codes. These mechanical systems shall not exceed gauge pressures of 125 pounds per square inch, other than refrigeration, or temperatures other than flue gas of 300° F (150° C) ... ."
2. A local building official may require an A/E seal for plumbing and mechanical systems even if not required to do so by this chart.
3. The law requires that, where an A/E seal is not present, the plans must be signed by the individual (not company) responsible for the design, including the individual's occupation and address.
4. The above chart applies to both new construction and to additions or remodeling.
5. The exemptions for plumbers, HVAC workers, and mechanical contractors are applicable only when both design and installation are under his/her direction or control.

## STATE AGENCIES WITH FUNCTIONAL DESIGN RESPONSIBILITIES

Although the USBC supersedes building regulations of state agencies, § 36-98 of the Code of Virginia provides it shall not supersede state agency regulations, which require and govern the functional design and operation of building related activities not covered by the USBC. The building official may require building permit applicants to submit evidence of compliance with functional design requirements prior to issuance of a permit. Functional design activities include but are not limited to: public water supply systems, wastewater treatment and disposal systems, and solid waste facilities. State agencies may also require, when authorized by other state law, buildings be maintained in accordance with the USBC under which constructed.

The following list is intended as a guide to users of the USBC. In a few cases, a memorandum of agreement exists between DHCD or the BHCD and the affected state agency. An asterisk in the listing indicates an agreement exists and is contained in the documents or may be obtained from DHCD.

RELATED ACTIVITIES	PHONE	ADDRESS
*Adult homes and day care centers, child care facilities, group homes for children and family day care homes	(804) 726-7156	Division of Licensing Programs, DSS 7 N. 8th Street Richmond, VA 23219
Signs for outdoor advertising	(804) 371-6828	VDOT, Environmental Division 1401 E. Broad St. Richmond, VA 23219
Utilities affected by highway	(804) 786-2801	VDOT 1401 E. Broad St. Richmond, VA 23219
Driveways entering State highways, VDOT District Engineer at the following:		
870 Bonham Rd. Bristol, VA 24203 (276) 669-6151	731 Harrison Ave. Salem, VA 24153 (540) 387-5488	1601 Orange Rd. Culpeper, VA 22701 (540) 829-7500
4219 Campbell Ave. Lynchburg, VA 24506 (804) 947-6599	1401 E. Broad St. Richmond, VA 23219 (804) 786-2801	87 Deacon Rd. Fredericksburg, VA 22404 (540) 899-4288
		P. O. Box 1070 Suffolk, VA 23434 (757) 925-2500
		P. O. Box 2249 Staunton, VA 24401 (540) 332-9075
Historic buildings and landmarks, preservation regulations	(804) 367-2323	Department of Historic Resources 2801 Kensington Avenue Richmond, VA 23221
Hospitals and nursing homes	(804) 367-2102	Div. of Lic. and Certification, VDH 3600 W. Broad St. , Suite 215 Richmond, VA 23219
Hotels, motels, restaurants, camps, swimming pools and tourist areas	(804) 864-7455	Office of Environmental Health, VDH 109 Governor Street Richmond, VA 23219
Mental health facilities (providing psychological care, drug, alcohol and mental treatment)	(804) 786-1747	Office of Licensing DMHMRSAS 109 Governor Street Richmond, VA 23219
School buildings (public) and training schools for juveniles and adults	(804) 225-2035	Department of Education P. O. Box 2120 Richmond, VA 23218
*Sewage treatment, septic tanks and sanitation; * Waterworks and public water supply	(804) 864-7470	Office Environmental Health, VDH 109 Governor St. Richmond, VA. 23219 or Local Public Health Office
Toilet facilities for construction workers; * Boilers and pressure vessels; Occupational safety	(804) 786-6613 (804) 786-3262 (804) 786-2391	Department of Labor and Industry 13 S. Thirteenth St. Richmond, VA 23219-1747
Architects & Engineers Asbestos & Lead based paint Contractors & Tradesman	(804) 367-8506 (804) 367-8595 (804) 367-8511	DPOR 3600 W. Broad St. Richmond, VA 23230
Detention Facilities	(804) 674-3102	Dept. of Correction – Arch. And Eng. 6900 Atmore Drive Richmond, VA 23225



## PREVIOUS ADOPTIONS and AMENDMENTS of the USBC

The Virginia Uniform Statewide Building Code (USBC) was first adopted in 1973 by the State Board of Housing. Responsibility for the USBC passed to the State Board of Housing and Community Development on July 1, 1978. The initial adoption and subsequent amendments by these Boards are indicated below:

### 1973 Edition

Effective date: September 1, 1973  
Title: Virginia Uniform Statewide Building Code,  
Administrative Amendments, 1973 Edition  
Major reference standards:  
BOCA Basic Building Code/1970, with  
1972 Accumulative Supplement  
BOCA Basic Mechanical Code/1971  
BOCA Basic Plumbing Code/1970, with  
1972 Accumulative Supplement  
NFPA National Electrical Code/1971  
One and Two Family Dwelling Code/1971

### 1974 Accumulative Supplement

Effective date: April 1, 1974  
Title: 1974 Accumulative Supplement to  
Virginia Uniform Statewide Building Code  
Major reference standards:  
BOCA Basic Building Code/1970, with  
1972 Accumulative Supplement  
BOCA Basic Mechanical Code/1971  
BOCA Basic Plumbing Code/1970, with  
1972 Accumulative Supplement  
NFPA National Electrical Code/1971

### 1975 Accumulative Supplement

Effective date: February 7, 1976  
Title: 1975 Accumulative Supplement to  
Virginia Uniform Statewide Building Code  
Major reference standards:  
BOCA Basic Building Code/1975  
BOCA Basic Mechanical Code/1975  
BOCA Basic Plumbing Code/1975  
NFPA National Electrical Code/1975  
One and Two Family Dwelling Code/1975

### 1978 Accumulative Supplement

Effective date: August 1, 1978  
Title: 1978 Accumulative Supplement to  
Virginia Uniform Statewide Building Code  
Major reference standards:  
BOCA Basic Building Code/1978  
BOCA Basic Mechanical Code/1978  
BOCA Basic Plumbing Code/1978  
NFPA National Electrical Code/1978  
One and Two Family Dwelling Code/1975

### 1978 Accumulative Supplement (First Amendment)

Effective date: January 1, 1981

NOTE: The 1978 Accumulative Supplement to the Virginia Uniform Statewide Building Code was continued, but with a few changes to the previously referenced BOCA Basic Building Code/1978.

### 1981 Edition

Effective date: July 16, 1982  
Title: Virginia Uniform Statewide Building Code,  
1981 Edition  
Major reference standards:  
BOCA Basic Building Code/1981  
BOCA Basic Mechanical Code/1981  
BOCA Basic Plumbing Code/1981  
NFPA National Electrical Code/1981  
One and Two Family Dwelling Code/1979  
with 1980 Amendments

### 1981 Edition (First Amendment)

Effective date: June 20, 1984  
Title: Sections 515.4 and 515.5 of Article 5 of the  
1981 Edition, Virginia Uniform Statewide  
Building Code

### 1984 Edition

Effective date: April 1, 1986  
Title: Virginia Uniform Statewide Building Code,  
Volume I - New Construction Code,  
1984 Edition  
Major reference standards:  
BOCA Basic Building Code/1984  
BOCA Basic Mechanical Code/1984  
BOCA Basic Plumbing Code/1984  
NFPA National Electrical Code/1984  
One and Two Family Dwelling Code/1983  
with 1984 Amendments

### 1987 Edition

Effective date: March 1, 1988  
Title: Virginia Uniform Statewide Building Code,  
Volume I - New Construction Code,  
1987 Edition  
Major reference standards:  
BOCA Basic Building Code/1987  
BOCA Basic Mechanical Code/1987  
BOCA Basic Plumbing Code/1987  
NFPA National Electrical Code/1987  
One and Two Family Dwelling Code/1986  
with 1987 Amendments

### 1987 Edition (First Amendment)

Effective date: March 1, 1989  
Title: Virginia Uniform Statewide Building Code,  
Volume I - New Construction Code,  
1987 Edition  
Major reference standards:  
Same as 1987 Edition

**1987 Edition (Second Amendment)**

Effective date: March 1, 1990

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1987 Edition

Major reference standards: Same as 1987 Edition

**1987 Edition (Third Amendment)**

Effective date: October 1, 1990

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1987 Edition

Major reference standards: Same as 1987 Edition

**1990 Edition**

Effective date: March 1, 1991

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1990 Edition

Major reference standards:

BOCA National Building Code/1990  
BOCA National Mechanical Code/1990  
BOCA National Plumbing Code/1990  
NFPA National Electrical Code/1990  
CABO One & Two Family Dwelling  
Code/1989 with 1990  
Amendments

**1990 Edition (First Amendment)**

Effective date: November 1, 1991

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1990 Edition - First Amendment

Major reference standards: Same as 1990  
Edition.

**1990 Edition (Third Amendment)**

Effective date: March 1, 1993

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1990 Edition - Third Amendment

Major reference standards: Same as 1990 Edition

**1993 Edition**

Effective date: April 1, 1994

Title: Virginia Uniform Statewide Building  
Code, Volume I - New Construction Code,  
1993 Edition

Major reference standards:

BOCA National Building Code/1993  
BOCA National Mechanical Code/1993  
BOCA National Plumbing Code/1993  
NFPA National Electrical Code/1993  
CABO One & Two Family Dwelling  
Code/1992 with 1993  
Amendments

**1996 Edition**

Effective date: April 15, 1997 with minor  
revision August 20, 1997

Title: Virginia Uniform Statewide Building  
Code, 1996 Edition

Major reference standards:

BOCA National Building Code/1996  
International Mechanical Code/1996  
International Plumbing Code/1995 with  
1996 Supplement  
NFPA National Electrical Code/1996  
CABO One & Two Family Dwelling  
Code/1995

**1996 Edition w/2000 Amendments**

Effective date: September 15, 2000

Title: Virginia Uniform Statewide Building  
Code, 1996 Edition with 2000  
Amendments

Major reference standards:

Same as 1996 edition except with  
1997 International Fuel Gas Code

**2000 Edition**

Effective date: October 1, 2003

Title: Virginia Uniform Statewide Building Code  
“USBC” (2000 Edition)

Major referenced standards:

International Code Council (ICC)  
International Building Code 2000  
ICC International Plumbing Code 2000  
ICC International Mechanical Code 2000  
NFPA National Electrical Code 1999  
ICC International Fuel Gas Code 2000  
ICC International Energy Conservation  
Code 2000  
ICC International Residential Code (IRC)  
2000

NOTE: An amendment addressing the fire  
separation distance between dwellings under the  
IRC became effective on September 9, 2004.

MEMORANDUM OF AGREEMENT  
between the  
Board of Housing and Community Development  
and the  
Virginia Department of Health

In accordance with Section 36-97 "et seq." Code of Virginia, the Virginia Department of Health (hereafter referred to as the "Department") and the Board of Housing and Community Development (hereafter referred to as the "BHCD") on this June 28, 2002, agrees to coordinate the Uniform Statewide Building Code (hereafter referred to as the "USBC") and the Virginia Waterworks Regulations (hereafter referred to as the "Regulations"). The parties agree to the following.

1. That adoption and promulgation of the USBC is the responsibility of the BHCD; that enforcement of the USBC is the responsibility of the local building department; and that adoption, promulgation and enforcement of the Regulations is the responsibility of the Department.
2. That the jurisdiction of the USBC includes all buildings and structures and their internal service plumbing, up to the point of connection to the water meter; and that the jurisdiction of the Regulations includes the meter, all public water supply transmission mains, treatment facilities, and raw water collection and transmission facilities. Where no meter is installed, the point of demarcation between the jurisdiction of the USBC and of the Regulations is the point of connection to the public water supply main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building;
3. That both the USBC and the Regulations will include a clear reference to jurisdiction of the other document.
4. That the Regulations will require each waterworks owner to have a cross-connection prevention program consistent with the Regulations. The regulations will require, as a minimum, a containment device at each service connection where a health, pollution or system hazard to the waterworks exists. It is recognized that in lieu of such containment devices, point of use devices shall comply with the provisions of the USBC. Point of use devices approved by the waterworks owner/Department shall be deemed to be in compliance with the USBC.
5. That wherever public water supply and/or water treatment equipment or facilities are located in a building or structure, the Regulations apply to all such equipment and the USBC applies to the structure and all of its incidental utilities (i.e. heating, electrical, house plumbing, etc.).
6. That the building official is required by the USBC to be assured that the water supply to a building is safe and of adequate capacity before issuing a building permit. Building permits involving a new water connection or extension of an existing connection to a public water supply main shall not be issued when the Department has notified the building official in writing that the water supply system is at or above its permitted capacity.

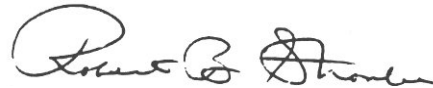
7. That appropriate amendments, additions, or deletions will be made to the Regulations and to the USBC to insure that there is no jurisdictional conflict between the two documents.
8. That it is the intention of both the BHCD and the Department to cooperate with each other in resolving any technical conflicts between the Regulations and the USBC, and in developing and implementing operational procedures to insure and promote a constructive working relationship between building and health officials.
9. That, except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staffs, all appropriate regulatory procedures will be exhausted prior to any judicial action.
10. This Agreement may be amended or terminated by mutual consent of the parties.

The undersigned agree to the conditions of this Agreement.



---

William C. Shelton  
Director, Department of Housing and  
Community Development  
for the Board of Housing and  
Community Development



---

Dr. Robert B. Stroube  
State Health Commissioner,  
Virginia Department of Health

## MEMORANDUM OF AGREEMENT

Between the Virginia Board of Housing and Community Development  
and  
Virginia Department of Health

In accordance with §§ 36-98 et seq., 32.1-12, and 32.1-163 et seq. of the *Code of Virginia*, the Virginia Department of Health (the "Department") and the Virginia Board of Housing and Community Development (the "Board") on this day, July 6, 2009, agree to coordinate jurisdictional responsibilities through the Virginia Uniform Statewide Building Code (13 VAC 5-62, the "Code") and the *Sewage Handling and Disposal Regulations* (12 VAC 5-610-20) and/or the *Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings* (12 VAC 5-640-10) which are referred to collectively as the "*Regulations*."

The parties agree as follows:

### 1. Codes and Regulations.

- A. Adoption and promulgation of the Code is the responsibility of the Board;
- B. Enforcement of the Code is the responsibility of the local building department;
- C. Promulgation of the *Regulations* is the responsibility of the Board of Health; and
- D. The *Regulations* are administered and enforced jointly by the Department and local health departments.

### 2. Onsite or Decentralized Sewage Systems.

- A. Where the wastewater from a building or structure is discharged to an onsite sewage treatment and dispersal system or an alternative single-family discharging sewage treatment system and the flow is by gravity, the jurisdiction of the Code includes all buildings and structures and their internal service plumbing up to the point of connection of the building drain to the building sewer. The jurisdiction of the *Regulations* includes the building sewer at the point of its connection to the building drain and the functional design, specifications equipment, materials, and all appurtenances (excluding electrical and structural) for the sewage handling and dispersal facilities. The sewage handling and dispersal facilities may include a septic tank, a pump station/tank, or additional treatment devices such as a sand filter and a soil absorption field. The pump tank is typically located downstream from the septic tank. Additional treatment devices may also include pumps and blowers as well

as other electrical devices. The jurisdiction of the *Regulations* will apply to all functional aspects of these facilities which (for pump stations/tanks) include a motor control center/panel, master disconnect switch and a manual override switch. The jurisdiction of the Code shall apply to the electrical and structural components of these facilities. The requirements of the Code concerning motor control centers, disconnects, and manual override switches shall apply when all of the following conditions are met:

- i. Pumps are individually less than two (2) horsepower;
- ii. A pump is employed only to lift effluent to a higher elevation for dispersal in a soil absorption field and is not considered part of the treatment process;
- iii. Effluent is delivered to a gravity distribution box; and
- iv. Cord-and-plug connections are located in a weather proof box outside of the pump tank/wetwell unless designed for installation within the pump tank/wetwell.

If all conditions cannot be met, a separate motor control center shall be required. Examples of situations requiring a separate motor control center include, but are not limited to, sewage systems utilizing pressure dosing, time dosing and similar design concepts, and systems serving commercial establishments. The Department (or Authorized Onsite Soil Evaluator where appropriate) will be responsible for noting on the construction permit whether a separate motor control center with master disconnect and override switches is required for a specific installation.

- B. Where the discharge from individual plumbing fixtures cannot flow by gravity to a building sewer, and where the building sewer will be connected to an onsite sewage treatment and dispersal system and where a pumping station and pumps will be located internal to the building or structure, the Code shall apply to the design, construction, and installation of the pump station, pumps, and appurtenances, and the *Regulations* will apply to the sewage treatment and dispersal system from the point of the building drain connection to the building sewer.

3. **Enclosed Equipment, Reuse.** Wherever sewage is treated for reuse in a manner other than soil dispersal or discharge to the waters of the Commonwealth, the *Regulations* will apply to the design of all associated equipment or facilities and the jurisdiction of the Code will apply to all buildings and/or structures used to house the treatment and reuse equipment and facilities as well as all service plumbing, wiring, etc.



#### 4. Permits.

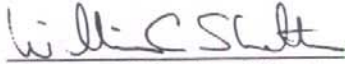
- A. In accordance with § 32.1-165 of the *Code of Virginia*, no county, city, town or employee thereof, shall issue a permit (building permit) for the construction of a new building designed for human occupancy without the prior written notification (in the form of a construction permit, operating permit, subdivision approval, or certification letter) of the State Health Commissioner ("Commissioner") or his agent that safe, adequate, and proper sewage treatment is or will be made available to such building. Whenever new construction will result in an increase in the wastewater flow or capacity of a an existing structure, the Commissioner's written notice to the building official will be in the form of a valid permit for construction of an onsite sewage system and neither certification letter nor subdivision approval will be sufficient to comply with this requirement. The Department will apply the standards set forth in the *Regulations* when evaluating applications for the handling and disposal of sewage onsite. The Department will notify the local building official as soon as practicable when a permit for a sewage treatment and disposal system has been issued in accordance with the *Regulations*.
- B. The jurisdiction of the Code includes the issuance of a certificate of occupancy upon inspection and approval of the structure, and the jurisdiction of the *Regulations* includes the issuance of an operation permit upon inspection and approval of the sewage treatment, dispersal, and handling system(s). The local health department will notify the local building official as soon as practicable when an operation permit has been issued and the local building official will not issue the certificate of occupancy as required by the Code until he has received such notice.
- C. The Code and the *Regulations*, when practical, will include clear references to the jurisdiction of the other document.
- D. Appropriate amendments, additions, or deletions will be made to the *Regulations* and to the Code, when practical, to ensure that there are no jurisdictional conflicts between the two.

#### 5. Conflict Resolution.

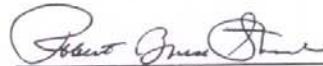
- A. It is the intention of both the Board and the Department to cooperate with each other in resolving any technical conflicts between the *Regulations* and the Code, and in developing and implementing operational procedures to ensure and promote constructive working relationships among building and health officials.

- B. Except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staff, all appropriate regulatory procedures will be exhausted prior to any judicial action.
- C. This Agreement may be amended or terminated by mutual consent of the parties.

The undersigned agree to the Conditions of this Agreement.



William, C. Shelton, Director  
Department of Housing and  
Community Development  
For  
The Board of Housing and  
Community Development



Robert B. Stroube  
State Health Commissioner  
Department of Health



MEMORANDUM OF AGREEMENT  
between the  
Board of Housing and Community Development  
and the  
Virginia Department of Labor and Industry

(Revised November 2001)

In accordance with Sections 36-98 et seq. and 40.1-51.6 et seq. of the Code of Virginia, the Virginia Department at Labor and industry (hereinafter referred to as the "Department") and the Board of Housing and Community Development (hereinafter referred to as the "Board") on this Nov. 1, 2001 agree to coordinate the Virginia Uniform Statewide Building Code (hereinafter referred to as the "Code") and the Boiler and Pressure Vessel Safety Regulations (hereinafter referred to as the "Regulations"). The parties agree to the following:

1. That enforcement of the Code is the responsibility of the local building department, and that enforcement of the Regulations is the responsibility of the Department.
2. That this agreement covers boilers and water heaters except:
  - A Boilers used in private residences or apartment houses of less than four apartments.
  - B. Hot water supply boilers and water heaters when the following limitations are not exceeded:
    - a) heat input of 200,000 BTU per hour
    - b) water temperature of 210 Fahrenheit
    - c) water-containing capacity of 120 gallons
3. That the local building department shall notify, in writing, the chief boiler inspector when a building, mechanical or plumbing permit is issued for any boiler or water heater that is subject to the Department's inspection. The local building department may provide computer generated disks in e-mail attachments listing owners/users addresses of boilers and water heaters.
4. That inspection and certification of boilers shall be the responsibility of the Department; however, the Department may authorize and accept inspection reports from approved special inspectors and owner-user inspection agencies in accordance with sections 40.1-51.9 and 40.1-51.11:1 of the Code of Virginia.
5. That the Department shall assure new and existing boilers and water heaters are in compliance with the Regulations.

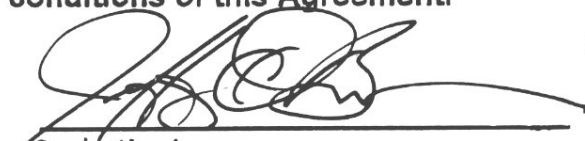
MEMORANDUM OF AGREEMENT  
PAGE2OF2

6. That the local building department shall accept the inspection certificate of compliance from the Department as evidence of compliance with the Regulations. The Department shall notify, in writing, the local building department of the issuance of certificate of compliance.
7. That appropriate amendments, additions, or deletions will be made to the Regulation. and to the Code to insure that there is no jurisdictional conflict between the two documents.
8. That it is the intention of both the Board and the Department to cooperate with each other in resolving any technical conflicts between the Regulations and the Code, and in developing and implementing operational procedures to insure and promote a constructive working relationship between building officials and boiler inspectors.
9. That, except in matters of imminent danger to public health or safety, whenever conflicts or disagreements arise between the two agencies or their staffs or localities, all appropriate regulatory procedures will be exhausted prior to any judicial action. That the local building official may require appropriate corrective actions in accordance with the Code, where unsafe conditions exist and there is an imminent danger to the public health or safety.
10. That this Agreement may be amended or terminated by mutual consent of the parties.

**The undersigned agree to the conditions of this Agreement.**

  
\_\_\_\_\_  
**Director,  
Department of Housing and  
Community Development**

**For the Board of Housing and  
Community Development**

  
\_\_\_\_\_  
**Commissioner,  
Department of Labor and  
Industry**



**VIRGINIA BOILER AND PRESSURE VESSEL GUIDE\***  
**2000 USBC Section 2801.1**

<b><u>OBJECT</u></b>	<b><u>APPLICATION</u></b>	<b><u>EXEMPTION</u></b>
Boiler	Residence	All
Boiler	Apartment Building	Less than 4 units
Boiler	Heating/Process	None
Boiler	Hot Water Supply	Less than 120 gal./ 200,000 BTU/hr input
Water Heater	Hot Water Supply	Less than 120 gal/ 200,000 BTU/hr input
Pressure Vessel	Storage, Air	Less than 8 ft. <sup>3</sup> (60 gal.)/ 175 psi set pressure
Pressure Vessel	Potable Water	No steam coil/ Less than 300 psi
Pressure Vessel	Air & Water	Less than 120 gal.
Pressure Vessel	AC/Refrigeration	Less than 5ft. <sup>3</sup> /250 psi

\* See Exemptions listed in § 40.1-51.8 of the Code of Virginia for the specific wording.

## SWCB REGULATIONS ON TANKS

The USBC section on flammable and combustible liquids indicates that regulations governing the installation, repair, upgrade, and closure of underground and aboveground storage tanks under the Virginia State Water Control Board (SWCB) regulation(s) 9 VAC 25-580-10 et seq. and 9 VAC 25-91-10 et seq. are adopted and incorporated by reference to be an enforceable part of this code.

The purpose of these charts is for quick reference to determine when and how tanks are regulated by these SWCB regulations. Tanks exempt or excluded by SWCB regulations are not exempt from meeting USBC requirements.

### CHART A - UNDERGROUND STORAGE TANKS (USTs)

A UST within any of the categories marked "YES" indicates that the SWCB regulations (<http://www.deq.state.va.us/tanks/dwnllib.html#tankregs>) contain requirements that the UST must comply with. Regulations do not apply to underground storage tanks that are not part of the definition<sup>a</sup>, or are excluded<sup>b</sup> by the regulations. In certain instances UST's may be partially regulated.<sup>c,d</sup> The SWCB regulations define an UST as any one or a combination of tanks (including underground pipes) that is used to contain an accumulation of regulated substances and the volume of which (including underground pipes) is 10% or more below the surface of the ground.

BRIEF DESCRIPTION	UST REG APPLY
UST Technical Regulations (9 VAC 25-580-10 et seq.) address "regulated substances" that is defined in Article 9 of the State Water Control Law to mean any one of the following: <sup>e</sup> a.) Any substance listed in §101(14) of CERCLA (42 USC § 9601 <i>et seq.</i> ) Available on the Web at: <a href="http://www.epa.gov/swrust1/fedlaws/cfr.htm#40cfr302.4">http://www.epa.gov/swrust1/fedlaws/cfr.htm#40cfr302.4</a> ; b.) Petroleum, including crude oil or any fraction thereof, that is liquid at standard conditions of temperature and pressure (60°F and 14.7 psia); or c.) Petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through a process of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.	YES
Any UST ≤ 110 gallons	NO
Farm or residential tank ≤ 1,100 gallons used for storing <u>motor fuel</u> for noncommercial purposes	NO
All underground tanks used for storing <u>heating oil</u> for consumption on the premises where stored	NO

**Note a.** Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; Tanks used for storing heating oil for consumption on the premises where stored; Septic tanks; Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or an intrastate pipeline; Surface impoundment, pit, pond, or lagoon; Storm water or wastewater collection systems; Flow-through process tanks; Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; Storage tank situated in an underground area (such as a basement, cellar, mine-working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor is regulated as an AST; Pipes connected to any of these tanks.

**Note b.** UST systems holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances; Wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or §307(b) of the Clean Water Act; Equipment of machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks; Any UST system whose capacity is 110 gallons or less; UST systems containing de minimis concentration of regulated substances; Emergency spill or overflow containment UST system that is expeditiously emptied after use.

**Note c.** Wastewater treatment tank systems; UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954; UST systems that are part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50, Appendix A; Airport hydrant fuel distribution systems; UST systems with field-constructed tanks.

**Note d.** Release detection does not apply to any UST system that stores fuel solely for use by emergency power generators.

**Note e.** Wording has been abbreviated. For complete definition see "regulated substance" in 9 VAC 25-580-10.

## CHART B - ABOVEGROUND STORAGE TANKS (ASTs)

A AST within any of the categories marked "YES" indicates that the SWCB regulations (<http://www.deq.state.va.us/tanks/dwnllib.html#tankregs>) contain requirements that the AST must comply with. Regulations do not apply to aboveground storage tanks that are not part of the definition(s)<sup>a</sup>, or are excluded<sup>b,e</sup> by the regulations. In certain instances AST's may be partially excluded by the regulations.<sup>c,d</sup>

BRIEF DESCRIPTION <sup>e</sup>	AST REG APPLY
AST Technical Regulations (9 VAC 25-91-10 et seq.) address tanks and connected piping containing "oil" at atmospheric pressure. "Oil" as defined means oil of any kind and in any form, including, but not limited to, petroleum and petroleum by-products, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oils, and all other liquid hydrocarbons regardless of specific gravity. Unless otherwise specified, regulations contain requirements for an individual AST with storage capacity greater than 660 gallons of oil. <u>Applicability of each of the part(s) of the SWCB regulation are identified within the regulation (e.g., Pollution prevention requirements does not apply for facilities with an AST storage capacity of &lt; 25000 gallons but ASTs must be registered with DEQ).</u> The term "pipes" or "piping" includes piping and associated piping utilized in the operation of an AST, or emanating from or feeding ASTs or transfers oil from or to an AST(e.g.,dispensing systems, including airport hydrant fueling systems, supply systems, gauging systems, auxiliary systems, etc.).	YES
An AST ≤ 660 gallons of oil	NO
An AST located on a farm or residence used for storing <u>motor fuel</u> for noncommercial purposes with an aggregate storage capacity ≤ 1,100 gallons	NO
An AST storing <u>heating oil</u> > 660 gallons for consumption on premises where stored (must be registered with DEQ)	(YES) <sup>c</sup>
An AST > 660 gallons storing <u>asphalt or asphalt compounds</u> that are liquid (60°F at 14.7 psia)	(YES) <sup>d</sup>
An AST used to store <u>propane gas, butane gas or other liquid petroleum gases</u>	NO
An AST regulated by Depart. of Mines, Minerals and Energy (Chap 22.1, § 45.1-361.1) COV	NO
AST used less than 120 days when: used in containment & cleanup; used by a federal, state or local entity in responding to an emergency; or used temporarily to replace permanent storage	NO
Licensed motor vehicles, unless used solely for the storage of oil	NO

**Note a.** AST definition does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC § 60101 *et seq.*). Tank definition does not include flow-through process tanks as defined in 40 CFR Part 280.

**Note b.** Vessels; Licensed motor vehicles, unless used solely for the storage of oil; An AST with a storage capacity of 660 gallons or less of oil; An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60° F at 14.7 psia) subject to and specifically listed or designated as a hazardous substance under the federal CERCLA; A wastewater treatment tank system that is part of a wastewater treatment facility regulated under the federal Clean Water Act; An AST that is regulated by the Depart. of Mines, Minerals and Energy under Chapter 22.1 (§ 45.1-361.1 *et seq.*) of the Code of VA; An AST used for the storage of products that are regulated pursuant to the federal Food, Drug, and Cosmetic Act; An AST that is used to store hazardous wastes listed or identified under Subtitle C of the RCRA (Solid Waste Disposal Act), or a mixture of such hazardous wastes and other regulated substances; An AST that is used to store propane gas, butane gas or other liquid petroleum gases; An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils; A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations; A surface impoundment, pit, pond, or lagoon; A stormwater or wastewater collection system; Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems; An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and cleanup of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on-site to replace permanent capacity storage; Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors; A flow-through process tank; Oily water separators; An AST containing dredge spoils; An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregate storage capacity of 1,100 gallons or less; or Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment.

**Note c.** At facilities with an aggregate AST storage capacity of 25000 gallons or greater of oil, an AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored is excluded from complying with Pollution Prevention Requirements (9 VAC 25-91-130 et seq.) but AST must be registered with DEQ.

**Note d.** Partial exclusions from portions of AST regulations for certain asphalt and asphalt compounds and for certain line pipe and breakout tanks of an interstate pipeline are identified in AST regulations.

**Note e.** Wording has been abbreviated. For complete wording, see AST regulations.

## CHART C - PARTIAL LIST OF KEY DIFFERENCES<sup>a, b, c</sup> ICC CODES vs SWCB REGULATIONS

The USBC section on flammable and combustible liquids indicates where differences occur between the provisions of this code and the incorporated provisions of the SWCB regulations, the provisions of the SWCB regulations shall apply. The purpose of this Chart is to identify a partial list of key differences.

SWCB Regulation Requirements UST = 9 VAC 25-580-10 et seq. AST = 9 VAC 25-91-10 et seq.	ICC 2000 Building/Fire Applicable Codes and/or Referenced Standards	Key Differences Noted
9 VAC 25-580-10 - Definition of UST- The definition of UST in SWCB UST regulations only requires 10% of tank & pipe to be underground to be a UST.	NFPA 30 requires tank to be completely covered to be an UST.	This is not considered a conflict since SWCB regulations indicate their definitions have meanings when used in their chapter. Therefore, use SWCB definition in applying their tank regulations and NFPA 30 requirements in applying building or fire code requirements.
9 VAC 25-580-310 – UST Temporary Closure  <u>Note:</u> For AST, see footnote c	IFC 2000 Section 3404.2.13.1.3 - UST out of use for 1 yr. requires: "Removal or Abandonment in Place (which is considered permanent closure by SWCB regulations)"	* <u>For upgraded systems</u> : SWCB regulation provides for UST temporary closure indefinitely for upgraded systems and therefore SWCB does not require removal or abandonment in place. * <u>For substandard systems</u> : SWCB regulation provides for extensions of UST temporary closure, at the option of the building official. DEQ policy recommended all substandard UST systems temporarily closed for the 12/22/98 deadline be permanently closed by 12/22/99. ** Therefore, SWCB regulations govern.

**Note a:** Tanks exempt or excluded by SWCB regulations are not exempt from meeting USBC requirements. For example, SWCB regulations exclude all USTs with heating oil consumed on premises stored, but USBC still has requirements for permits, installation, repairs, abandonment, removal, etc; and IRC has requirements for permits, installation, etc.

**Note b:** Tank closure per IRC: IRC, Chapter 22, has requirements for installation, but has no requirements for tank closure. The owner would still have to comply with SWCB regulations for tank closure on tanks not excluded from SWCB regulations.

**Note c:** Even though SWCB regulations do not address temporary closures of ASTs, the ICC out of service requirements in IFC Section 3404.2.13.2 shall apply.

# FUEL STORAGE TANK PERMIT, CONSTRUCTION DOCUMENT, AND INSPECTION INFORMATION

Product In The Tank	Where The Tank Is Being Placed	Activity	Fire Prevention Code			Virginia Uniform Statewide Building Code		
			Permit	Construction Documents	Insp.	Permit	Construction Documents	Insp.
Liquefied Petroleum Gas LPG (NFPA 58)	Commercial	Installation	Yes single tanks greater than 30 gallons, and multiple tanks greater than 60 gallons	Yes	Yes	Yes	Yes	Yes
Diesel Fuel or Gasoline	Commercial	Abandonment/removal/closure	No	No	No	No	No	No
	Residential	Installation	No	No	No	Yes	No	Yes
	Residential	Abandonment/removal/closure	No	Yes	Yes	No	Yes	No
	Commercial <sup>1,4,5</sup>	Abandonment/removal/closure	Yes if greater than 60 gallons	No	Yes	Yes	No	Yes
	Residential <sup>2,5</sup>	Installation	No	No	No	Yes	No	Yes
	Residential <sup>1,2,5</sup>	Abandonment/removal/closure	No	No	No	Yes	No	Yes
Fuel Oil	Commercial <sup>1,4,5</sup>	Installation	Yes if greater than 60 gallons	Yes	Yes	Yes	Yes	Yes
	Commercial <sup>5</sup>	Abandonment/removal/closure	Yes	No	Yes	Yes	No	Yes
	Residential <sup>1,3,5</sup>	Abandonment/removal/closure	No	No	No	Yes	No	Yes

- Owner is required to submit the results of soil sample(s) to the Dept. of Environmental Quality (DEQ) for evaluation after the abandonment/removal/closure of the registered tank(s). Owner must report sample results greater than 100ppm TPH within 24 hours of release discovery to the Regional DEQ Office (DEQ Telephone # 800-592-5482).
- Above ground/ below ground storage tanks greater than 1100 gallons: Department of Environmental Quality regulations shall also apply.
- Above ground tanks greater than 660: Department of Environmental Quality regulations shall also apply.
- Above ground storage tanks greater than 660 gallons and below ground storage tanks greater than 110 gallons: Department of Environmental Quality regulations shall also apply.
- Above ground tanks greater than 660 gallons shall be registered in accordance with the State Water Control Board regulations.
- Department of Environmental Quality regulations shall not apply to underground storage tanks where the stored fuel oil is consumed on the premises where stored.